

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

No. 15-1326

TODD S. GLASSEY AND MICHAEL E. MCNEIL,

Plaintiffs-Appellants

v.

MICROSEMI INC., INTERNET ENGINEERING TASK FORCE, THE
INTERNET SOCIETY, UNITED STATES, APPLE INC., CISCO INC., EBAY
INC., PAYPAL, INC., GOOGLE INC., JUNIPER NETWORKS, MICROSOFT
CORP., ORACLE INC., AND NETFLIX, INC.,

Defendants-Appellees

Appeal from the United States District Court for the Northern District of California
in case no. 14-cv-03629, District Judge William H. Alsup

**DEFENDANTS-APPELLEES' MOTION TO DISMISS
FOR LACK OF JURISDICTION OR, IN THE ALTERNATIVE, TO
TRANSFER TO THE NINTH CIRCUIT COURT OF APPEALS**

Pursuant to Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27(f), Defendants-Appellees Microsemi Corporation, Internet Engineering Task Force, The Internet Society, United States of America, Apple Inc., Cisco Systems, Inc., eBay Inc., PayPal, Inc., Google Inc., Juniper Networks, Inc., Microsoft Corporation, Oracle Corporation, and Netflix, Inc. (collectively “Defendants-Appellees”) respectfully move to dismiss this appeal for lack of jurisdiction or, in the alternative, to transfer pursuant to 28 U.S.C. Section 1631 to the United States Court of Appeals for the Ninth Circuit, where Plaintiffs-Appellants Todd S. Glassey and Michael E. McNeil (collectively “Glassey”) already have a concurrently pending appeal from the same underlying lawsuit (Case No. 14-17574). Defendants-Appellees also request that, because Glassey’s opening brief is due on March 4, 2015, the Court stay this case until it renders a decision on this Motion.

Glassey’s appeal does not involve any of the categories for invoking this Court’s exclusive jurisdiction pursuant to 28 U.S.C. Section 1295. The only putative basis for jurisdiction is Glassey’s vague allegation of patent infringement. The District Court for the Northern District of California (“the District Court”), however, dismissed those claims based on lack of standing—specifically holding that Glassey lacks standing to assert patent infringement because he admitted that he assigned away his patent rights in 1999. Glassey’s vague allegation of patent

infringement therefore does not arise under the patent laws, as required for exclusive jurisdiction before the Federal Circuit. Accordingly, because Glassey's request for relief does not involve a substantial question of federal patent law, this appeal should be heard by the Ninth Circuit.

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

A. The Underlying Action in the District Court

On August 11, 2014, Glassey sued Microsemi in the District Court. Dkt. 1, Exh. A. On August 25, Glassey filed a first amended complaint ("FAC") adding as parties the other Defendants-Appellees and asserting a nearly-unintelligible string of purported facts that allude to, but do not actually allege, patent infringement. Dkt. 6, Exh. B. In the FAC, Glassey admits that Microsemi is the assignee of the patent purportedly in suit—U.S. Patent No. 6,370,629 ("the '629 patent")—as a result of a settlement agreement Glassey signed in 1999 with Microsemi's predecessor in interest:

[t]he [settlement agreement] is still in force and serves as the basis for Microsemi's continuing claim to be the assignee of the '629 Patent. *See* Exh. B at ¶ 129.

* * *

As a result of Microsemi's unilateral and unlawful expansion of the scope of the ['629 patent], and its status as assignee of that patent, Microsemi has been unjustly enriched *Id.* at ¶ 142.

Following motions to dismiss filed by a number of Defendants-Appellees, the District Court issued an order striking the FAC and addressing some of its fundamental deficiencies—in particular, Glassey’s apparent lack of standing to assert the ’629 patent. Dkt. 109, Exh. C at 4:18-20. The order instructed Glassey to file a second amended complaint that “must cure the deficiencies identified herein. Failure to do so may well result in dismissal with prejudice. Plaintiffs must plead their best and most plausible case and further opportunities to plead will not likely be allowed.” *Id.* at 4:28:-5:2.

On November 12, 2014, Glassey filed a second amended complaint. The next day, Glassey filed a “corrected” second amended complaint (“SAC”). Dkt. 112, Exh. D. The SAC purportedly invoked district court subject matter jurisdiction based on alleged patent infringement arising under the patent laws of the United States, Title 35, *see id.* at ¶ 107; on alleged violations of Sections 1 and 2 of the Sherman Act and Section 4 of the Clayton Act, *id.* at ¶ 108; on alleged violations by the government under the PCT, TRIPS, NAFTA and “Patent fraud statutes,” *id.*; and on alleged constitutional questions, including the “interaction of Patent Protected IP inside a Copyright Infringement under Title 17,” *id.* at ¶ 109.

Glassey’s SAC also invoked 28 U.S.C. Sections 1331 and 1337 as a basis for subject matter jurisdiction for alleged “Fraud and Patent Claims as well the authority to order the establishment of the IR165 Fraud Loss . . . as well as the

power to restrain those defendants from Violating the Sherman Act Section One and Two and to restrain MICROSEMI from its violation of the Clayton Act Section Four as well as find against those violating 35 USC 271 sections (a), (b) and/or (c) in their infringing against PLAINTIFFS' rights to enforce their Phase-II Technologies against Defendants, one and all.” *Id.* at ¶ 110. Notably, Glassey’s SAC did not invoke 28 U.S.C. Section 1338 as a ground for district court jurisdiction.

Glassey’s SAC sets forth 10 counts:¹

Count 1: Alleged infringement of the ’629 patent, Sherman Act and Clayton Act violations, and tortious interference against Microsemi. *Id.* at ¶¶ 171-183.

Counts 2 through 7: Alleged infringement of the ’629 patent against Microsoft, Google, Apple, Oracle, eBay and PayPal, Cisco, and Juniper. *Id.* at ¶¶ 184-214.

Count 8: Alleged infringement of the ’629 patent and Sherman Act and Clayton Act violations against the Internet Engineering Task Force and The Internet Society. *Id.* at ¶¶ 215-252.²

¹ While the SAC mentions Defendant Netflix in passing, none of the enumerated counts are directed to Netflix.

² Although the SAC labels the count against the ISOC Defendants as “Count 9,” it is actually the eighth count. Moreover, while the SAC does not include a formal

Count 9: Alleged violation of 19 U.S.C. Section 2904, “reciprocal nondiscriminatory treatment of International Patent (and IP complaints), FISA abuse, NAFTA violation, Violation of TRIPS and PCT agreements” against the United States. *Id.* at ¶¶ 253-257.

Count 10: is against the State of California, which is not a party to this appeal. *Id.* at ¶¶ 258-268.

Although Glassey’s SAC asserted a claim for patent infringement of the ’629 patent, Glassey acknowledges that his ownership of the ’629 patent is contingent on the rescission of an assignment agreement entered into as part of a settlement that assigned the patent rights to Microsemi through a series of predecessors. Specifically in Paragraph 129 of the SAC, Glassey stated that “if the Settlement is voided by the court . . . it would trigger the contingency transfer language in the Co-Inventor Agreement making the [] 629 Patent property solely of PLAINTIFFS.” *Id.* at ¶ 129.

On November 23, 2014, Glassey filed a motion to “void” the settlement agreement referenced in Paragraph 129 of the SAC. Dkt. 123, Exh. E. Glassey sought an order that he “be awarded full custody of the 629 [patent].” *Id.* at 4:3-5.

A number of Defendants-Appellees filed motions to dismiss the SAC and the District Court issued an order to show cause why the SAC should or should not

count for copyright infringement, Glassey suggests that his copyright “performance rights” have been infringed. Exh. D at ¶ 226.

be stricken. Dkt. 152, Exh. F. The parties filed their respective responses. Dkt. Nos. 159, 160 and 161, Exhs. G, H and I, respectively. On December 29, 2014, the District Court issued an order granting the motions to dismiss, denying all of Glassey's motions and striking the SAC with prejudice, Dkt. 185, Exh. J, and issued a final judgment, Dkt. 186, Exh. K.

In striking the SAC, the District Court found that Glassey lacked "standing to assert patent infringement for even they concede that they do not own the asserted patents." Exh. J at 7:16-17. The District Court also determined that Glassey's motion to "void" the settlement agreement lacked any merit whatsoever: "[n]o reasonable juror could find that the settlement agreements [assigning the patent rights] plaintiffs signed in 1999 should be 'voided' based on the record presented. Indeed, no notice of this 'claim for relief' was provided in the second amended complaint and none of plaintiffs arguments is persuasive." Exh. J at 5:18-20.

B. Glassey's Appellate Filings

On December 29, 2014, Glassey filed a notice of appeal to the Ninth Circuit, *see* Dkt. 187, Exh. L which was then docketed as appeal No. 14-17574, *see* Dkt. 190, Exh. M. The briefing schedule at the Ninth Circuit is as follows:

April 8, 2015: Glassey Opening Brief

May 8, 2015: Defendants-Appellees' Answering Brief

May 22, 2015: Glassey Reply Brief

On January 7, 2015, Glassey filed a notice of appeal from the United States District Court for the District of Columbia (even though no case had ever been filed in that court) and asked to transfer his appeal to the United States Court of Appeals for the District of Columbia Circuit. Dkt. 191, Exh. N. That same day, Glassey re-filed another notice of appeal from the United States District Court for the District of Columbia. Dkt. 193, Exh. O. An appeal was not docketed at the D.C. Circuit, but instead before this Court on February 11, 2015.

Defendants-Appellees now respectfully seek dismissal of this case because this Court lacks appellate jurisdiction under 28 U.S.C. Section 1295(a)(1) or any other basis.

II. ARGUMENT

A. Glassey's Claims Do Not Fall Within This Court's Jurisdiction Because They Do Not "Arise Under" Federal Patent Law

As this Court is well aware, 28 U.S.C. Section 1295(a)(1) limits the exclusive jurisdiction of the Federal Circuit to patent cases "arising under" federal patent law. The Supreme Court has held that this Court's patent jurisdiction extends "only to those cases in which a well-pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent

law, in that patent law is a necessary element of one of the well-pleaded claims.” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808-09 (1988). Appeals from cases that turn on matters of state law should be heard by the regional Circuits and State courts, even if they touch on patent issues. *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002) (where the complaint does not allege patent infringement, Federal Circuit jurisdiction does not extend to well-pleaded patent infringement counterclaims); *Gunn v. Minton*, 568 U.S. 310 (2013) (legal malpractice claim concerning patent prosecution does not “arise under any Act of Congress relating to patents” and thus should be brought in state court).

Here, Glassey has not brought a patent case within the meaning of 28 U.S.C. Section 1295(a)(1). Although Glassey’s SAC purports to assert a claim for infringement, he has repeatedly acknowledged that he does not own the ’629 patent. *See* Exh. B at ¶ 129 (“The [settlement agreement] is still in force and serves as the basis for Microsemi’s continuing claim to be the assignee of the ’629 Patent.”); *id.* at ¶ 142 (“As a result of Microsemi’s unilateral and unlawful expansion of the scope of the [’629 patent], and its status as assignee of that patent, Microsemi has been unjustly enriched . . .”). Only a patent’s legal owner has the exclusive right to sue for patent infringement. *See* 35 U.S.C. Section 281; *see also Propat Intern. Corp. v. Rpost, Inc.*, 473 F.3d 1187, 1189-94 (2007) (finding

purported transferee of patent lacked standing to sue because it had no true ownership interest in the patent). A patent's legal owner includes "not only the patentee to whom the patent was issued but also the successors in title to the patentee." 35 U.S.C. Section 100(d). Glassey admits he does not own the '629 patent. Glassey therefore lacks standing to sue for patent infringement and thus federal patent law cannot form the basis for the Court's jurisdiction.

Rather, Glassey's SAC admits that his ownership rights to the '629 patent are contingent on a court rescinding the 1999 settlement agreement that assigned such rights to Microsemi's predecessor. Exh. D at ¶ 129 ("if the Settlement is voided by the court . . . it would trigger the contingency transfer language in the Co-Inventor Agreement making the [] 629 Patent property solely of PLAINTIFFS."); *see also* Exh. E at 4:3-5 (Glassey sought an order that he "be awarded full custody of the 629 [patent]."). Such relief does not involve a substantial question of federal patent law, but rather an adjudication based on contract law.

This case is remarkably similar to *Nolen v. Lufkin Indus.* in which this Court dismissed an appeal for lack of subject matter jurisdiction because the plaintiffs' ability to allege patent infringement was conditioned on the district court first rescinding the assignment agreement. The Court found that:

[a]s a result, this case falls squarely within our precedent holding that a claim for patent infringement does not arise

under the patent laws when it requires judicial action to vest title in the party alleging infringement. *See Jim Arnold Corp. v. Hydrotech Sys., Inc.*, 109 F.3d 1567, 1572 (Fed.Cir.1997) (finding that, if a plaintiff does not own a patent absent judicial intervention voiding a patent assignment, “federal court is not the place to seek that initial judicial intervention”); *see also Larson v. Correct Craft, Inc.*, 569 F.3d 1319, 1327 (Fed.Cir.2009) (finding no standing to sue for correction of inventorship because, “[w]ithout first voiding his patent assignments, Larson has no ownership interest in the ... patents.”).

Nolen v. Lufkin Indus., Inc., 469 F. App’x 857, 860-61 (Fed. Cir. 2012).

Like *Nolen*, Glassey must first obtain a court order rescinding the assignment agreement to Microsemi before having standing to assert any patent infringement claim. Glassey is far from doing so. In fact, the District Court found that “[n]o reasonable juror could find that the settlement agreements [assigning the patent rights] plaintiffs signed in 1999 should be ‘voided’ based on the record presented. Indeed, no notice of this ‘claim for relief’ was provided in the second amended complaint and none of plaintiffs arguments is persuasive.” Exh. J at 5:18-20. The District Court therefore concluded that Glassey lacked “standing to assert patent infringement for even they concede that [plaintiffs] do not own the asserted patents.” *Id.* at 7:16-17. To the extent Glassey appeals the District Court’s determination regarding the validity of the patent assignment, that appeal does not arise under the patent laws and should be venued in the Ninth Circuit.

B. Glassey's Counts for Alleged Antitrust Violations, Copyright Infringement, FISA Abuse, and NAFTA, TRIPS, and PCT Violations Do Not Implicate Federal Circuit Jurisdiction

Glassey's other claims—antitrust violations under the Sherman and Clayton Acts and copyright infringement—likewise do not invoke the exclusive jurisdiction of the Federal Circuit. Rather, the Ninth Circuit is the appropriate venue. *See, e.g., Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421 (9th Cir. 1995) (deciding an appeal involving antitrust claims); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802 (9th Cir. 1988) (same); *see also Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014) (reversing Ninth Circuit decision related to copyright infringement).

Moreover, Glassey's claims against the United States find no basis to implicate the exclusive jurisdiction of the Federal Circuit. In Count 9, Glassey speculates that the United States government issued a FISA warrant to his counsel, thereby infringing his 7th Amendment right to access the courts. Exh. D at ¶ 257. Second, Glassey asserts that a statute regarding treaty reciprocity, 19 U.S.C. Section 2904, binds the United States under three international treaties ("the NAFTA, TRIPS and PCT agreements"³) to criminally prosecute all patent frauds.

Glassey explains that these treaties divest the Attorney General of all prosecutorial

³ Glassey does not specifically identify which sections of these three treaties require the United States to prosecute such complaints. Instead, Glassey just cursorily refers to the treaties' acronyms, omitting even their full names or statutory citations.

discretion as to whether to pursue cases of patent fraud. Exh. D at ¶¶ 255-56, 102-103. Third, though not specifically enumerated in Count 9 against the United States, Glassey’s jurisdictional statement, which cites Internal Revenue Code Section 165 (20 U.S.C. Section 165), alludes to his request to take a multi-trillion dollar tax write-off on the basis that he is alleged an victim of patent fraud. *Id.* at ¶ 110.

None of these three claims fall within the exclusive Federal Circuit jurisdiction delineated in 28 U.S.C. Section 1295. In fact, Glassey’s only claim that even tangentially relates to patent law is his convoluted argument that Section 2904 divests the Attorney General of discretion as to whether or not to criminally prosecute patent fraud. But like Glassey’s infringement claims, this claim is contingent on Glassey’s ownership of the patents. Exh. D at ¶ 254. As explained *supra*, that is a question for the Ninth Circuit to resolve, not this Court.

Further, even if there were statutory jurisdiction under 28 U.S.C. Section 1295, this Court otherwise lacks jurisdiction to consider any of Glassey’s claims. As the District Court properly held, Glassey’s has no standing to bring FISA-related claims. ECF No. 1-2, 12/29/14 Order at 3. Nor has Glassey demonstrated that there is subject matter jurisdiction by showing that United States waived its sovereign immunity for Glassey’s FISA claim. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (“sovereign immunity is jurisdictional in nature;” “absent a waiver,

sovereign immunity shields the Federal Government and its agencies from suit waiver); *see also Al-Haramain Islamic Foundation, Inc. v. Obama*, 705 F.3d 845, 854-55 (9th Cir. 2012) (no sovereign immunity waiver for FISA warrant issued under Section 810).

Glassey's Section 2904 claim fares no better. There is no private right of action under the NAFTA, TRIPS and PCT agreements, and therefore no jurisdiction for Glassey's claims. *Medellin v. Texas*, 552 U.S. 491, 506 n.3 (2008) ("The background presumption is that international agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts"). The domestic statutes implementing NAFTA and TRIPS expressly bar private causes of action. *See* 19 U.S.C. Sections 3312(c) and 3512(c) (no person other than the United States has a cause of action under NAFTA and TRIPS). The PCT does not create a private cause of action because it limits membership to sovereign states (PCT Article 62), and the PCT's dispute section addresses only disputes between contracting states, not private parties (PCT Article 59). *See Katel LLC v AT&T Corp.*, 607 F.3d 60, 67-68 (2d Cir. 2010) (holding a private corporation did not have a private cause of action under international telecommunications treaty because the treaty limited membership to sovereign states and addressed only disputes between member states). Additionally, Glassey also fails to identify any portion of 19 U.S.C.

Section 2904 that otherwise waives the United States' sovereign immunity and subjects it to the court's jurisdiction. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) (court presumes that there is no jurisdiction and it is plaintiff's burden to show otherwise).

Finally, Glassey cannot bring a claim seeking permission to take a tax write-off. The Declaratory Relief Act, 28 U.S.C. Section 2201, separately prohibits the Court from granting declaratory relief in controversies with respect to federal taxes. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 n.7 (1974).

III. CONCLUSION

This Court lacks appellate jurisdiction over this case under 28 U.S.C. Section 1295(a)(1). Because Glassey's SAC contains no other colorable basis for jurisdiction, this Court should dismiss Glassey's appeal. Alternatively, the Court should transfer this appeal to the Ninth Circuit where Glassey has a pending appeal of the same underlying matter. Defendants-Appellees also respectfully request that this case is stayed pending a decision.

FEDERAL CIRCUIT RULE 27(a)(5) STATEMENT

Counsel for Defendants-Appellees has conferred with Todd S. Glassey and Michael E. McNeil, and they indicated that they are opposed to the relief requested herein and that they intend to file a response.

Dated: March 2, 2015

Respectfully submitted,

LEE TRAN & LIANG LLP

HEATHER F. AUYANG
heather.auyang@lrlattorneys.com
601 Gateway Blvd., Suite 1010
South San Francisco, California 94080
Telephone: (650) 422-2130
Facsimile: (650) 241-2142

By: /s/ Heather F. Auyang
Heather F. Auyang

Attorney for Defendants
MICROSEMI CORP., ORACLE CORP.
and MICROSOFT CORP.

Dated: March 2, 2015

O'MELVENY & MYERS LLP

LUANN L. SIMMONS
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

By: /s/ Luann L. Simmons
Luann L. Simmons

Attorneys for Defendant
APPLE INC.

Dated: March 2, 2015

IRELL & MANELLA LLP

JONATHAN S. KAGAN
(jkagan@irell.com)
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276

Telephone: (310) 277-1010
Facsimile: (310) 203-7199

By: /s/ Jonathan S. Kagan
Johnathan S. Kagan

Attorneys for Defendant
JUNIPER NETWORKS, INC.

Dated: March 2, 2015

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

DOUGLAS R. NEMEC
dnemec@skadden.com
4 Times Square
New York, New York 10036
Telephone: (212) 735-3000
Facsimile: (917) 777-2419

JASON D. RUSSELL (*of counsel*)
jason.russell@skadden.com
300 South Grand Avenue
Los Angeles, California 90071-3144
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

By: /s/ Douglas R. Nemec
Douglas R. Nemec

Attorneys for Defendants
THE INTERNET SOCIETY AND
INTERNET ENGINEERING TASK
FORCE

Dated: March 2, 2015

WINSTON & STRAWN LLP

DAVID S. BLOCH
dbloch@winston.com
101 California Street
San Francisco, CA 94111-5840

Telephone: (415) 591-1000
Facsimile: (415) 591-1400

By: /s/ David S. Bloch
David S. Bloch

Attorney for Defendant
CISCO SYSTEMS, INC.

Dated: March 2, 2015

SACKS, RICKETTS & CASE LLP

STEPHEN CHIARI
schiari@srclaw.com
E. CRYSTAL LOPEZ
clopez@srclaw.com
177 Post Street, Suite 650
San Francisco, CA 94108
Telephone: 415-549-0580
Facsimile: 415-549-0540

By: /s/ Stephen Chiari
STEPHEN CHIARI

Attorneys for Defendants
eBay Inc. and PayPal, Inc.

Dated: March 2, 2015

WILSON SONSINI GOODRICH &
ROSATI
Professional Corporation

STEFANIE E. SHANBERG
sshanberg@wsgr.com
One Market Plaza
Spear Tower, Suite 3300
San Francisco, California 94105
Telephone: (415) 947-2000
Facsimile: (415) 947-2099

By: /s/ Stefani E. Shanberg
Stefani E. Shanberg

Attorneys for Defendants
GOOGLE INC. and NETFLIX, INC.

Dated: March 2, 2015

BENJAMIN C. MIZER
Acting Assistant Attorney General

JOHN FARGO
Director

/s/ Alice Suh Jou_____

ALICE SUH JOU
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 532-4135
Facsimile: (202) 307-0345
Email: alice.s.jou@usdoj.gov

ATTORNEYS FOR DEFENDANT
UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that the foregoing DEFENDANTS-APPELLEES' MOTION TO DISMISS FOR LACK OF JURISDICTION OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NINTH CIRCUIT COURT OF APPEALS was filed electronically using the Court's CM/ECF system. The undersigned certifies that service has been made this 2nd day of March 2015 on the attorneys of record in the proceeding above at the last known address.

I hereby certify that two true copies of the forgoing DEFENDANTS-APPELLEES' MOTION TO DISMISS FOR LACK OF JURISDICTION OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NINTH CIRCUIT COURT OF APPEALS were sent by first-class mail, postage prepaid this 2nd day of March 2015 to:

Todd S. Glassey
305 McGaffigan Mill Road
Boulder Creek, CA 95006

Michael E. McNeil
P.O. Box 640
Felton, CA 95018-0640

Pro Se Plaintiffs

I further served courtesy copies of the above-referenced document via electronic mail addressed to tglassey@earthlink.net and memcneil@juno.com.

/s/ Heather F. Auyang

Heather F. Auyang

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Microsemi Corporation certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Microsemi Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:See attached.February 24, 2015
Date/s/ Heather F. Auyang
Signature of counsel
Heather F. Auyang
Printed name of counselPlease Note: All questions must be answered
cc: See attached Certificate of Service

ATTACHMENT TO CERTIFICATE OF INTEREST

The names of all law firms and the partners or associates that appeared for Microsemi Corporation before the District Court or are expected to appear in this Court are:

LEE TRAN & LIANG LLP

Eugene Hahm

Heather F. Auyang

Lisa J. Chin

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc., et alNo. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Apple Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Apple Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:O'Melveny & Myers LLP, Luann L. Simmons, David R. Eberhart, and Alexander B. ParkerFebruary 25, 2015

Date

/s/ Luann L. Simmons

Signature of counsel

Luann L. Simmons

Printed name of counsel

Please Note: All questions must be answered

cc: See Certificate of Service

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)
Cisco Systems, Inc. certifies the following (use "None" if applicable; use extra sheets
 if necessary):

1. The full name of every party or amicus represented by me is:

Cisco Systems, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real
 party in interest) represented by me is:

N/A

3. All parent corporations and any publicly held companies that own 10 percent or more
 of the stock of the party or amicus curiae represented by me are:

None

4. ☒ The names of all law firms and the partners or associates that appeared for the party
 or amicus now represented by me in the trial court or agency or are expected to appear in this
 court are:

Winston & Strawn LLP
David S. Bloch, James C. Lin

February 24, 2015

Date

/s/ David S. Bloch

Signature of counsel

David S. Bloch

Printed name of counsel

Please Note: All questions must be answered

cc: _____

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi, et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)
 EBAY INC. certifies the following (use "None" if applicable; use extra sheets
 if necessary):

1. The full name of every party or amicus represented by me is:

EBAY INC.
 PAYPAL, INC.

2. The name of the real party in interest (if the party named in the caption is not the real
 party in interest) represented by me is:

Not applicable

3. All parent corporations and any publicly held companies that own 10 percent or more
 of the stock of the party or amicus curiae represented by me are:

None.

4. ☒ The names of all law firms and the partners or associates that appeared for the party
 or amicus now represented by me in the trial court or agency or are expected to appear in this
 court are:

SACKS, RICKETTS & CASE LLP, Stephen Chiari, Evelyn C. Lopez.

February 25, 2015

Date

/s/ E. Crystal Lopez

Signature of counsel

E. Crystal Lopez

Printed name of counsel

Please Note: All questions must be answered

cc: _____

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc., et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)Google Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:
Google Inc., Netflix, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:
None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:
None.

4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:
Stefani E. Shanberg, Jennifer J. Schmidt, Eugene Marder, Wilson Sonsini Goodrich & Rosati, Professional Corporation.

February 25, 2015
 Date

/s/ Stefani E. Shanberg
 Signature of counsel
Stefani E. Shanberg
 Printed name of counsel

Please Note: All questions must be answered
 cc: See Certificate of Service

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey & McNeil v. Microsemi Inc., et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

The Internet Society; Internet Engineering Task Force certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:
The Internet Society; Internet Engineering Task Force

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:
Not Applicable

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:
None. The Internet Engineering Task Force is an organized activity of the Internet Society and is not a legal entity.

4. ☐ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:
Skadden, Arps, Slate, Meagher & Flom LLP (Douglas R. Nemec, Jason D. Russell)

2/25/2015
 Date

/s/ Douglas R. Nemec
 Signature of counsel
Douglas R. Nemec
 Printed name of counsel

Please Note: All questions must be answered
 cc: See attached certificate of service

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc., et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Juniper Networks Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Juniper Networks Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:Irell & Manella LLP, Jonathan S. Kagan and Christine M. WoodinFebruary 25, 2015
Date/s/ Jonathan S. Kagan
Signature of counsel
Jonathan S. Kagan
Printed name of counselPlease Note: All questions must be answered
cc: See Certificate of Service

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)Microsoft Corporation certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Microsoft Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:See attached.February 24, 2015
Date/s/ Heather F. Auyang
Signature of counsel
Heather F. Auyang
Printed name of counselPlease Note: All questions must be answered
cc: See attached Certificate of Service

ATTACHMENT TO CERTIFICATE OF INTEREST

The names of all law firms and the partners or associates that appeared for Microsoft Corporation before the District Court or are expected to appear in this Court are:

LEE TRAN & LIANG LLP

Eugene Hahm

Heather F. Auyang

Lisa J. Chin

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc., et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)Netflix, Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:
Netflix, Inc., Google Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:
None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:
None.

4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:
Stefani E. Shanberg, Jennifer J. Schmidt, Eugene Marder, Wilson Sonsini Goodrich & Rosati, Professional Corporation.

February 25, 2015
Date

/s/ Stefani E. Shanberg
Signature of counsel
Stefani E. Shanberg
Printed name of counsel

Please Note: All questions must be answered
cc: See Certificate of Service

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi Inc.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Oracle Corporation certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Oracle Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:See attached.February 24, 2015
Date/s/ Heather F. Auyang
Signature of counsel
Heather F. Auyang
Printed name of counselPlease Note: All questions must be answered
cc: See attached Certificate of Service

ATTACHMENT TO CERTIFICATE OF INTEREST

The names of all law firms and the partners or associates that appeared for Oracle Corporation before the District Court or are expected to appear in this Court are:

LEE TRAN & LIANG LLP

Eugene Hahm

Heather F. Auyang

Lisa J. Chin

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Glassey v. Microsemi., et al.No. 15-1326

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)
PAYPAL, INC. certifies the following (use "None" if applicable; use extra sheets
 if necessary):

1. The full name of every party or amicus represented by me is:

EBAY INC.
 PAYPAL, INC.

2. The name of the real party in interest (if the party named in the caption is not the real
 party in interest) represented by me is:

Not applicable

3. All parent corporations and any publicly held companies that own 10 percent or more
 of the stock of the party or amicus curiae represented by me are:

PayPal, Inc. is a wholly owned subsidiary of eBay Inc.

4. ☒ The names of all law firms and the partners or associates that appeared for the party
 or amicus now represented by me in the trial court or agency or are expected to appear in this
 court are:

SACKS, RICKETTS & CASE LLP, Stephen Chiari, Evelyn C. Lopez.

February 25, 2015

Date

/s/ E. Crystal Lopez

Signature of counsel

E. Crystal Lopez

Printed name of counsel

Please Note: All questions must be answered

cc: _____

EXHIBIT A

FILED

AUG 11 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**EDL**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIATODD S. GLASSEY
305 McGaffigan Mill Road
Boulder Creek, California 95006

and

MICHAEL E. MCNEIL
PO Box 640
Felton, California 95018-0640

Plaintiffs,

vs.

Microsemi Inc
One Enterprise Aliso Viejo, CA 92656 USA,
and DOES 1...100;

Defendants

CASE NO.

JUDGE

CV 14 3629**COMPLAINT****Jury Demand Endorsed Herein**

May it please the Court, for their Complaint, Plaintiffs Todd S. Glassey and Michael E. McNeil state as follows:

1. Plaintiffs are individuals who were, for all times relevant hereto, residents of Santa Cruz County, California.

2. Defendant Microsemi ("**Microseni**") Inc is on information and belief, a California based US Corporation.

3. Defendant Symmetricom, Inc. ("**Symmetricom**"), was, on information and belief, a Delaware corporation with its principal place of business in Irvine California.

4. Symmetricom did, on information and belief, acquire the assets and liabilities of Datum, Inc. ("**Datum**"), in 2002 through a Merger creating a new Symmetricom Corroboration as the successor to Datum.

5. Defendant Digital Delivery Inc ("**DDI**") is a Massachusetts based corporation which Plaintiffs retained for Patent Agency legal representation;

6. Datum did, on information and belief, acquire the assets and liabilities of Digital Delivery, Inc. ("**DDI**") in or about July 1999.

7. Microsemi is, on information and belief, the successor in interest for any liabilities of Symmetricom, Datum and DDI to Plaintiffs.

8. The Internet Engineering Task Force ("IETF") is on information and belief, a Global Standards Organization who has produced the majority of the network standards applications which infringe are written from. As a DOE this includes their management and membership;

JURISDICTION AND VENUE

9. This Court has original subject matter jurisdiction over this suit pursuant to 28 USC § 1338 because the matters in it relate to patents, International filing of patents and copyright infringements;

10. This Court has subject matter jurisdiction over the remaining claims at issue in this suit pursuant to is supplemental jurisdiction as codified by 28 USC § 1367 because they form part of the same case and controversy as those claims relating to

patents and their infringement through licensing issued via copyright in Global Network Standards for the use of these intellectual properties.

11. Further under Subject Matter Jurisdiction because this case uniquely involves both US and international Patents and asks the question as to whether Patent Protections in an issued Patent can be set aside by a copyrighted Network Technology Standard which uses that Intellectual Property without permission and authorize "any and all uses of it" without any legal standing to do so; an act which functionally is being interpreted by the Industry as authorization for them to use these intellectual protocols without compensation on a global basis, as such this case meets all the requirements for hearing in the District Court;

12. This Court has personal jurisdiction over this matter because the Plaintiffs reside in this judicial district and a substantial portion of the events below took place in this district.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts or omissions giving rise to the claims at issue in this dispute occurred in this district.

STATEMENT OF OPERATIVE FACTS

14. This Complaint is being brought in the United States District Court because there are issues in dispute between the parties which require the Court to construe the claims of certain US Patents and copyrights issued against those patent

contents in technical products and applications for patents which confers exclusive jurisdiction for central components of this dispute to the federal judiciary.

15. Prior to the filing of this Complaint in this Court, the Plaintiffs and Symmetricom were parties to a California Superior Court suit captioned *Michael E. McNeil, et al. v Book (Symmetricom) et al.*, which was dismissed without prejudice to any of the claims therein and proceeded as that Court's Case No. CV 165643 (the "State Court Lawsuit").

16. This filing is the transfer of that lawsuit to the Federal Jurisdiction in full because the State Court Lawsuit could not continue to be prosecuted in California Superior Court because, as that case developed, it became apparent that the California Superior Court would be required to construe "US Patent and simultaneous copyright claims" which no Federal Court has ruled in yet, and perform this ruling against parties in a number of jurisdictions (*the IETF and its international members) to render any judgment on the claims for relief Plaintiffs brought, and that Court lacked the subject matter jurisdiction to do so.

17. Further since the Federal Government is the signatory to the TRIPS agreement the international nature of the abandoned instances of US6370629 patents filed in Japan, Brazil, Canada, South Africa and the EU are only actionable under the TRIPS treaty in the US and only the US District Court has standing in an international treaty.

18. Plaintiffs are computer scientists with expertise in the design, development, and implementation of timekeeping technologies for use in a variety of security, commerce, and communications systems with a special focus on digital evidence systems focusing on location and time infrastructure.

19. Symmetricom, for itself and as successor in interest to Datum and DDI, is in the business of commercializing timekeeping technologies for use in various markets.

Plaintiffs' Relationship with Datum

20. In or about October 1997, Plaintiff Glassey approached Datum through Davey Briggs VP of Marketing for the Beverley Massachusetts division of Datum. The purpose of the conversation was to retain Datum to "manufacture a component of the time controls" for an email and document control gateway of Glassey's design. The design was called the Trusted Timing Infrastructure and creates a set of evidence-to-transaction models and the technology to implement them.

21. Initially Datum said no to building the high-end components of the system but was very interested in the component level Trusted Local Clock Module as a potential mass-market addition to Datum's existing Board Level Timing Products so they referred him to the San Jose California division called BANCOM.

22. At Bancom/Datumn Glassey interfaced initially with Mitch Stone the VP of Marketing; Glassey's request to Datum if he was right would open new end-user and OEM markets to Datum in the board level timing products area and to further to that Stone opened detailed market analysis discussion between Plaintiff Glassey and Datum, concerning whether Datum and Glassey might undertake broader business efforts together; To allow free and open discussion about Glassey's IP Datum and Glassey entered into a mutual nondisclosure agreement in November 1997 (the "**Datum NDA**"). Mitch Stone processed that NDA.

23. In the months following the execution of the Datum NDA, Glassey and Datum (through Mitch Stone as the principal point of contact) had a variety of

conversations and did a variety of industry analysis efforts to determine the total potential of the market sector for this time-stamping evidence system; this effort included two road trips on which Glassey and Datum VP of Marketing Mitch Stone ran the customer survey with exciting results.

24. The next step was a meeting with the division presidents of all of Datum and a Board Meeting at a local trade show happening in Atlanta; to Attend the meeting Glassey was flown out to present the total of the potential to the Board and officers of the corporation for the Trusted Timing Infrastructure components he asked them to build for him.

25. At this point Datum initiated aggressive discussions with Glassey about product design of their systems and how his infrastructure could be used to advance their existing BC635 GPS based timing card as a stand alone and clustered time service module.

26. This excited Datum even further and Erik Van Der Kaay the President and CEO of all of Datum corporate umbrella called Glassey and told him the deal was on. He asked Glassey to both incorporate and bring in at least one more engineering member for his team and promised both guaranteed financing through a monthly payment process to let GMT just focus on the engineering as well as longer term reseller status.

27. To meet that demand, in early 1998 Plaintiff Glassey was joined in his commercial efforts by Plaintiff McNeil in Glassey's new company known as GMT.

28. To support Datum running Payroll for GMT on or about May 4, 1998, Plaintiffs each executed a consulting agreement with Datum for the purpose of securing certain technical consulting services (the "**Datum Consulting Agreements**"), true and correct copies of which are attached as Exhibits A and B hereto.

29. The Datum Consulting Agreements were effective from May 4, 1998, to July 4, 1998, and during that period Plaintiffs provided services to Datum exclusively relating to market analysis to support Datum's developing e-commerce division.

30. Upon the expiration of the Datum Consulting Agreements, Plaintiffs and Datum agreed to continue to work together without further written agreements with the understanding, based on the existing Datum NDA, that Plaintiffs would own any and all intellectual property developed by them or shared by them during the term of the continuing relationship and that Plaintiffs would be independent contractors for Datum.

31. Among the tasks Plaintiffs agreed to take on as independent contractors for Datum after July 4, 1998, were the identification of potential acquisition targets for Datum as it sought to expand its e-commerce business.

Plaintiffs' Relationship With DDI

32. From approximately December 1997 onward, Plaintiffs worked to develop other relationships in the industry for the purpose of commercializing their time control technologies.

33. One of the companies that Plaintiffs developed a relationship with was Digital Delivery Inc ("DDI"). Glassey and DDI President Mark Hastings were talking about adding some timing controls to DDI's product suites and so then entered into a Non-Disclosure Agreement (Jun 1997) to further those discussions.

34. Later but under the NDA Glassey disclosed the scope and design of his GeoLocation Controls and Location Based Policy Services to Hastings as his new patent application; This conversation took place in the employee second floor lounge at Westlaw Main with Westlaw Employee Ruven Schwartz Esq and Datum VP Mitch Stone

present. Hastings had accompanied Glassey and Stone to Westlaw to discuss time services and Glassey's Trusted Timing Infrastructure with them as a product potential.

35. Hastings was excited about the idea of using secure time and location information (physical, logical or virtual) as a control aspect of a policy switch. This can be used for many other key applications as well so he became very aggressive with Glassey about getting these 'new features' patent protected and added to Confidential Courier at all costs.

36. One weekend in later August of 1997 Glassey was approached by DDI president Mark Hastings about his (Hastings) acting as Glassey's Patent Agent for the filing of the location based service patent. Glassey initially didnt trust the situation and because Hastings was formally represented by Richards and Fish and they would be representing Glassey before the PTO through Hastings it seemed believable.

37. There were numerous discussions between Glassey and Hastings about this including one key one where it was finally agreed that "with Richards and Fish as counsel of record that Hastings could represent Glassey before the PTO".

38. Under the NDA between Glassey and Hastings, the Plaintiffs turned over the initial Intellectual Properties to the Agent (Hastings and DDI) for the creation of the filing documents for the USPTO;

39. At this Time DDI president Mark Hastings and his counsel from Richards and Fish approached Glassey with a new plan. The "new plan" was that rather than Hastings filing a new patent for Glassey which he would sublicense from Glassey he would file an amendment to the one he already had and Glassey would share the enforcement rights against its IP through a subsidiary agreement;

40. This was a 100% reversal of the roles under which the original agreement was consummated. Because of this Glassey again was very uncomfortable about and said no initially; it was only after a number of further conversations and Glassey's being assured by Richards and Fish ***the patent would issue quickly*** Glassey agreed.

41. Thus the amended instance of the Hastings "Confidential Courier" patent ("992") was filed in 1998; Everything was fine initially although Glassey and McNeil were concerned about how little of the original ((2 technology one could identify in the filing but it was early in the process and the initial Examination was a year away or so Glassey was told so we just waited.

42. As part of his work with Datum Glassey had introduced Hastings to Datum formally; In early 1999 things changed.

43. Hastings immediately stopped answering questions about the patents filing and in July in violation of the Co-Inventor "E Assignability Section Hastings reassigned the patent to Datum and sold them Digital Delivery Inc taking a job replacing the then incumbent president of the BANCORP Division of Datum where Glassey's work was done.

44. As to how he did that when Richards and Fish filed the patent originally they omitted the agreement which said the assignment was only valid for one year (in the Co-Inventor Agreement) from the filing and improperly filed it as ASSIGNED instead of CONDITIONALLY ASSIGNED. This allowed Hastings to sign on the reassignment without Glassey's or McNeil's Signature. This was corrected in 2013 with the attached exhibit (K- USPTO correction to original filing status). Thus the Federal Record was finally corrected on August 6th 2013 to reflect the original assignment as conditional;

45. Glassey's sole purpose for retaining DDI was to get a low cost guaranteed filing in half a dozen jurisdictions and to get the patents issued as soon as possible. The new amended instance of the original DDI patent was to be filed with U.S. Office and the foreign instances agreed upon later (Brazil, EU, Japan, Canada, and South African) as the **Controlling Access Patent** and DDI and Plaintiffs sought to formalize an agreement which would allow for the most prompt filing of the application for the Controlling Access Patent. In fact US6370629 was filed for joint access and Plaintiff's use in Japan, Canada, the EU, South Africa and Brazil.

The 1998 Co-Inventor Agreement

46. To enable this global patent filing activity effective on or about October 26, 1998, Plaintiffs and DDI entered into an "pre-paid legal services" agreement known as the **Co-Inventor Agreement**, a copy of which is attached hereto as Exhibit C.

47. The Co-Inventor Agreement retains Hastings as the president of DDI to act as Glassey's Patent Agent with full legal control and power of attorney relative to the limited area of patent filings.

48. According to Recital D the Co-Inventor Agreement, its purpose was:

[T]o allow the Controlling Access Patent application to be submitted as early as possible and prior to a definitive agreement between the parties with respect to each party's rights to exploit the Controlling Access Patent, the respective mutual and exclusive rights to the underlying or derivative technology, methodology, or other patentable subject matter contained or referenced in the Controlling Access Patent, and the compensation to be paid by Digital to Glassey-McNeil for assignment of certain rights therein to Digital.

49. Recital A of the Co-Inventor Agreement commemorated DDI's ownership of the Confidential Courier product and its underlying patent ('992 patent).

50. Paragraph 1.C. of the Co-Inventor Agreement commemorated that Plaintiffs developed and provided to the Controlling Access Patent application geolocation Controls and Location Based Services both “**Phase II**” a Term of Art meaning a system providing both physical location information but also very accurate time with phase matching data for aligning cryptographic heartbeats across a network or distributed framework. One very powerful source is obviously the US Governments GPS sources. Thus Phase-II provides a new level of authentication over the basic services Hastings had built into his existing patent. From the data model perspective Phase-II technology represents an authentication schema concurrent with industry standards in cryptography¹

51. Paragraph 2.A. of the Co-Inventor Agreement provided further that, “[DDI] acknowledges that the Phase II technology is solely and exclusively the idea and invention of [Plaintiffs].”

52. The Co-Inventor was intended to be replaced in form by a larger agreement. One which codified Glassey’s rights to the IP and his third party enforcement rights (any and all uses) for the IP he purchased the pre-paid legal services for. As evidence of this the Co-Inventor Agreement explicitly contemplated that a future “definitive” agreement would be entered among the parties concerning the compensation to be paid to Plaintiffs as well as the parties’ mutual and exclusive rights to the Controlling Access Patent within 365 days of the signing At that time the Provisional Access and use Rights to both the original filing and Hastings 992 patent became open.

¹ as an example we list one Phase II authentication schema description - “a cryptographic signing and verification process with the transmittal of time and geographic positioning information that allows a legally indemnifiable degree of trust to be established in the time and geographic positioning information thus conveyed.” but there are a number of others as well.

53. Finally the last possibility documented in the Co-Inventor Agreement was a total failing on Hastings part where both patents revert to shared of Glassy as the superior rights holder in third-party enforcement of the patent-protected IP.

54. Two days after the Co-Inventor Agreement was executed, on October 29, 1998, the Controlling Access Patent Application (the “**1998 Patent Application**”) was filed with the US Patent and Trademark Office (“USPTO”), a copy of which is attached as Exhibit D hereto and in it McNeil and Hastings partners we added to the patent filing so the final title includes all four parties, Glassey as the principal inventor, McNeil as Glassey's senior Engineering Specialist, and Hastings and Willets for their work in the previous patent. As it happens though Willets was never on the original patent and as such shouldnt have been on the final filing as well. This became yet another misrepresentation from Hastings in the filing of US6370629.

55. In violation of the IP transfer provision of the Co-Inventor Agreement Datum and DDI consummated a merger on or about July 29, 1999, whereby DDI became a wholly owned subsidiary of Datum upon which merger Datum became the successor-in-interest to all of the rights and responsibilities contemplated by the Co-Inventor Agreement. As such Datum became the Fiduciary although Glassey and McNeil were both very dissatisfied with the situation.

The 1999 Controlling Access Settlement

56. Immediately after the prohibited purchase of Digital Delivery Inc., Datum Corp fired Bancom Division President David Robinson and replaced him with Hastings.

57. In addition to Hastings coming on board as an officer of Datum two weeks later in August 1999 Datum without warning filed a lawsuit against Glassey and McNeil ("the dispute");

58. Datum also froze all payments outstanding to Glassey and McNeil after they had just had Glassey expend significant amounts of money developing design and marketing materials for them. The net effect was they as GMT's sole customer was Datum functionally drove GMT into insolvency because they froze GMT's invoices still outstanding; as such they drove the GMT and both Glassey and McNeil personally to the edge of bankruptcy.

59. Through this, and with what turned out to be very bad legal advice from GMT counsel Jason Book Esq, both Glassey and McNeil were forced to accept the settlements that Datum Counsel John Cannon drafted, as such Datum was the sole architect of the forms and their contents in the two settlement documents.

60. One Settlement for Digital Delivery Inc and a second for the Consulting Work and the IP under it which is the subject of US Patent 6393126 called the TTI Settlement. Both used the same template and were drafted by John Cannon Esq of Stadling Locca in Newport Beach California.

61. The two separate settlement agreements were simultaneously signed in late November 1999, one of which is at issue in this this section of the lawsuit and is the so-called **Controlling Access Settlement and its twin the DDI Patent Rights Settlement/management agreement**, a copy of which is attached as Exhibit E.

Controlling Access (DDI Patent Agent services) Settlement

62. The Controlling Access Settlement is the specific document the Co-Inventor Agreement says will replace it in regard to its patent filing efforts.

63. The Controlling Access Settlement was intended as a cap or umbrella for other documents necessary to complete the deal and properly control the patents and the roles for both parties, but served as the “definitive” agreement between Plaintiffs and Datum concerning the initial compensation to be paid to Plaintiffs; it is very clear about who owns which scope of technology but Plaintiffs would have to wait to see what the final patent was issued as. It is contemplated in 1998 by the Co-Inventor Agreement fully.

64. Paragraph 2.2 of the Controlling Access Settlement defined the “Controlling Access Patent” for purposes of that agreement to include the 1998 Patent Application as well as foreign patents pending Filing Services under the Fiduciary Role for the Patent Filing Agent herein.

65. Paragraph 2.3 of the Controlling Access Settlement defined **Phase II Technology** as:

The method of authentication, encryption and transmission of date/time and/or location data for the purpose of linking together two or more disparate electronic components, such that a trust model is established between them. Such physical elements must individually be capable of computational and cryptographic functionality, but computationally may be isolated from one another. Such electronic components must be physically secure, and communicate with each other over communications channel(s) which may themselves be insecure.

66. Phase II Technology included, and expanded, the technology identified as GPS Phase II technology which had been identified as the property of Plaintiffs in the Co-Inventor Agreement.

67. Pursuant to Paragraph 3.2 of the Controlling Access Settlement, Plaintiffs assigned all rights, title, and interest in the 1998 Patent Application and foreign patents based thereon to Datum.

68. However, Datum explicitly agreed in Paragraph 3.3 on the Controlling Access Settlement that Plaintiffs, “own[] all rights, title and interest in the Phase II Technology”.

69. Paragraph 3.3 of the Controlling Access Settlement granted Datum a, “perpetual, non-exclusive, irrevocable, assignable, sub-licensable, worldwide license for use of the Phase II Technology and derivatives thereof, with rights to sublicense, in connection with the limited scope of the DDI Confidential Courier product and its derivatives”.

70. According to the foregoing provisions of the Controlling Access Settlement, Plaintiffs had exclusive rights, title, and interest to Phase II Technology, anywhere in the world, except for the limited rights which Datum had to use that Phase II Technology which was identified in the 1998 Patent Application.

71. Also according to the foregoing provisions of the Controlling Access Settlement which granted all ownership rights in Phase II Technology to Plaintiffs, subject to Datum’s license, Datum had an obligation to protect and maintain any and all patents relating to Phase II Technology to which it was assignee.

72. Paragraph 3.6 of the Controlling Access Settlement further clarified the parties’ intent that Plaintiffs would continue to have the right to commercialize Phase II Technology.

73. Specifically, Paragraph 3.6 memorialized that Plaintiffs agreed not to, “make, use, or sell any products developed using or derived from the Phase II Technology which also include the technology described in or covered by [Datum’s existing Confidential Courier patent]” which under the terms of the original Co-Inventor Agreement was not jointly owned by both DDI and Glassey in the agreement.

74. The above clarifies that Plaintiffs retained all rights to make, use, and sell new "Phase II" Technology which did not also include the technology described in or covered by the patent covering the Confidential Courier product, but since the patent (the 992 Patent had already transited to a shared resource this provision of the settlement was discovered to be moot and unenforceable.

75. As of the effective date of the Controlling Access Settlement, the 1998 Application had been pending at the US Patent and Trademark Office ("PTO") unchanged from its October 28, 1998, filing date.

The 2001 Controlling Access Patent Application Expansion

76. After the parties executed the Controlling Access Settlement, Datum continued the prosecution of the Controlling Access Patent but ran into disapproval of the original expansion of Hastings existing patent which was never communicated to Glassey.

77. At no time following the execution of the Controlling Access Settlement were Plaintiffs allowed to be involved in the prosecution of the Controlling Access Patent.

78. At no time following the execution of the Controlling Access Settlement did Datum ever attempt to include Plaintiffs in the prosecution of the Controlling Access Patent or advise them of the status of that prosecution.

79. Following a rejection of the developing application for the Controlling Access Patent for anticipation and another for obviousness, Hastings under his role as the Bancom Division President at Datum radically expanded the amount of Phase II Technology in the independent claims it pursued in the Controlling Access Patent

application in its response to office action dated August 20, 2001 (the “**2001 Patent Application Rewrite**”), a copy of which is attached as Exhibit F hereto.

80. Plaintiffs did not discover the scope and effect of the 2001 Patent Application Rewrite until 2013.

81. As a result of the 2001 Patent Application Rewrite, each of the independent claims Datum pursued in its application for the Controlling Access Patent included vastly more of Plaintiffs’ Phase II Technology than they had ever agreed to license to Datum in the Controlling Access Settlement. This change is detailed in the attached declaration pertaining to unauthorized changes in the Patent.

82. The consequence of Datum’s radical expansion of the amount of Phase II Technology in the 2001 Patent Application Rewrite was twofold: first, it was sufficient to convince the PTO to grant a notice of allowance of the application and paved the way for issuance of the patent; and second, it had the effect of subsuming what remained of Plaintiffs’ Phase II Technology into the issued Controlling Access Patent and prevented them from seeking that patent themselves.

83. The Controlling Access Patent ultimately issued as US Patent No. 6,370,629 (the “**629 Patent**”) on April 9, 2002, a copy of which is attached as Exhibit G hereto.

84. The ‘629 Patent will be in effect until October 29, 2018.

85. The claims in the 2001 Application Rewrite numbered 12, 18, 21, 25, and 29 were issued verbatim as claims 11, 16, 19, 23, and 27 (respectively) in the ‘629 Patent.

86. The 629 Patent contained a significant amount of Phase II Technology which Symmetricom had never compensated Plaintiffs for and which Plaintiffs had free reign to license to third parties.

87. Datum, and on information and belief later Symmetricom, prosecuted similar patents to the '629 Patent in other jurisdictions around the world.

**Symmetricom's Repudiation Of Plaintiffs' Rights
To Phase II Technology**

88. In the years following the issuance of the '629 Patent, Plaintiffs attempted to license their Phase II Technology, as embodied in the '629 Patent, to various third parties.

89. Datum (hereafter referred to interchangeably with its parent Symmetricom) interfered with Plaintiffs' attempts to do so by refusing to acknowledge the existence or validity of the Controlling Access Settlement until it produced a countersigned copy for the first time in February 2013.

90. On information and belief, Symmetricom further interfered with Plaintiffs' attempts to license their Phase II Technology by refusing to produce a countersigned copy of the Controlling Access Settlement to Plaintiffs, including refusing to do so in connection with the civil suits relating to the Controlling Access Settlement pending in California Superior Court since 2009.

91. On information and belief, Symmetricom allowed foreign patents which covered Plaintiffs' Phase II Technology to lapse or become abandoned, despite having the duty to maintain those patents and having knowledge that Plaintiffs relied on them to do so.

**COUNT ONE
(Breach of Controlling Access Settlement by
2001 Patent Application Rewrite)**

92. Plaintiffs restate the above as if set out in full herein.

93. In 1999, Plaintiffs and Symmetricom entered into the Controlling Access Settlement by which they contracted for Symmetricom's license to the portion of Plaintiffs' Phase II Technology which was embodied in the 1998 Patent Application.

94. The Controlling Access Settlement is still in force and serves as the basis for Symmetricom's continuing claim to be the assignee of the '629 Patent.

95. In 2001 Symmetricom breached the Controlling Access Settlement, and its license to Phase II Technology embodied therein, with its 2001 Application Rewrite to the USPTO, which resulted in the '629 Patent containing claims which read on Phase II Technology never contemplated by the parties to the Controlling Access Settlement and never licensed to Symmetricom.

96. As a result of Symmetricom's breach of the Controlling Access Settlement, Plaintiffs have been damaged in the amount of licenses they could have received from the Phase II Technology described in the 2001 Application Rewrite, their expectancy therefrom, and/or their lost profits from the 2002 issue date of the '629 through the life of the '629 Patent which will not expire until 2018.

COUNT TWO
(Breach of Controlling Access Settlement For
Failure to Protect Phase II IP)

97. Plaintiffs restate the above as if set out fully herein.

98. The Controlling Access Settlement contemplated that certain portions of Plaintiffs' Phase II Technology would fall within the claims of Controlling Access Patent and that Symmetricom would serve as assignee of that patent.

99. The Controlling Access Settlement also commemorated the fact that Plaintiffs were the sole owners of all Phase II Technology.

100. As assignee to that Phase II Technology which fell within the Controlling Access Patent, Symmetricom had a duty to protect and maintain all such Phase II Technology, including, without limitation, maintaining all domestic and foreign patent rights thereto.

101. Symmetricom has breached its duty to maintain the Phase II intellectual property by allowing certain foreign patents covering Plaintiffs' Phase II Technology to lapse.

102. As a result of Symmetricom's breach of its duty to maintain the patents covering the Phase II Technology, Plaintiffs have been damaged in an amount to be determined at trial.

COUNT THREE
(Unjust Enrichment)

103. Plaintiffs restate the above as if set out fully herein.

104. In 1999, Plaintiffs and Symmetricom entered into the Controlling Access Settlement by which they contracted for Symmetricom's license to the portion of Plaintiffs' Phase II Technology which was embodied in the 1998 Patent Application.

105. In 2001 Symmetricom submitted the 2001 Application Rewrite to the USPTO, which resulted in the '629 Patent issuing containing claims which read on Phase II Technology never contemplated by the parties to the Controlling Access Settlement and never licensed to Symmetricom by Plaintiffs.

106. As a result of Symmetricom's unilateral and unlawful expansion of the scope of the Controlling Access Patent, and its status as assignee of that patent, Symmetricom has been unjustly enriched in the amount that it has benefitted in any way from the Phase II Technology not included in the 1998 Patent Application.

COUNT FOUR
(Tortious Interference With Prospective Economic Advantage)

107. Plaintiffs restate the above as if set out fully herein.

108. Plaintiffs are the sole owners of Phase II Technology with the limited exceptions of Symmetricom's license rights as delineated in the Controlling Access Settlement.

109. Symmetricom, as the counterparty to the Controlling Access Settlement, had actual knowledge of Plaintiffs' rights to all Phase II Technology, subject to its limited license rights.

110. After issuance of the '629 Patent, Plaintiffs attempted to license rights to their Phase II Technology with prospective licensees.

111. On information and belief, Symmetricom directly interfered with Plaintiffs' attempts to obtain economic advantage from their Phase II Technology by advising prospective licensees that Plaintiffs had no rights to any of the property embodied in the '629 Patent, including all Phase II Technology therein.

112. Symmetricom likewise repudiated the existence of the Controlling Access Settlement to Plaintiffs and to third parties by, among other things, refusing to produce a fully-executed copy of that agreement until February of 2013.

113. Symmetricom's direct and indirect actions were wrongful and done with the intent to deprive Plaintiffs of their business expectancy with prospective licensees.

114. As a result of Symmetricom's tortious interference with their prospective license arrangements, Plaintiffs have been damaged in an amount to be determined at trial.

COUNT FIVE

(Declaratory Judgment – ‘629 Patent Contains Phase II Technology Not Within 1998 Patent Application)

115. Plaintiffs restate the above as if set out fully herein.

116. There is an actual controversy as to whether and to what extent the 2001 Application Rewrite and the ‘629 Patent contain Phase II Technology which was not contemplated by, or incorporated into, the 1998 Patent Application or the Controlling Access Settlement.

117. Plaintiffs request the Court enter a declaratory judgment based upon its construction of the claims of the 2001 Application Rewrite and the ‘629 Patent and its comparison of them with those in the 1998 Patent Application to delineate with specificity the components of the claims of the 2001 Application Rewrite and the ‘629 Patent which read on Phase II Technology and are not contained in the 1998 Patent Application.

COUNT SIX
(Tortious Interference With Prospective Economic Advantage)

118. Plaintiffs restate the above as if set out fully herein.

119. Plaintiffs are the sole owners of Phase II Technology with the limited exceptions of Symmetricom’s license rights as delineated in the Controlling Access Settlement.

120. Defendants have a formal responsibility to protect the IP described in the Settlements it controls for all parties. That specifically includes making sure the patents are viable and unauthorized users are not using the IP or authorizing Copyrightable Standards or Code implementing these standardized functions which will infringe on Plaintiffs rights.

121. As such Count Six involves a DOE,, the Internet Engineering Task Force ("IETF") and its Parent Organization the Internet Society. Symmetricom's direct and indirect actions in its working with the IETF are a key part of their tortuous interference.

122. In its interfering with Plaintiffs rights, Symmetricom refused to confirm the US 6370629 controlled third-party enforcement rights Plaintiff's enjoyed per the settlement and in doing so (actively participating in the standards process) they defrauded Plaintiff's by placing an IETF controlled copyright onto Glassey's (Plaintiffs) Property as part of the standards practice; this was done by Symmetricom's allowing the IETF, the Global Standards Org to public Glassey IP under their own Copyright and assign formal copyright to it for any and all uses to the world.

123. In doing this the IETF has used the IP in numerous of its standards despite continuous objection from Glassey over its unauthorized use and the fact the Standards Org as a Consensus based standards organization isnt doing research and cannot claim its doing anything other than IP development for commercial users, and as such has no research exemption.

124. Further the IETF cannot even if they are a research institution which is highly doubtful since they maintain the Internet Research Task Force, a separate org controlled under a separate set of rules and practices for all research.

125. As such the IETF publication of our Patented Technologies constitutes a Copyright Infringement on the natural copyright issued when the US Government issued the US patent controlling this material. The principal claim is the IETF not being a research institute or academic practice, under Patent and US IP and Trade Secret Law, no extension of the research exemption under the copyright provision exists, but relative

to Global Network Technology Standards, that no copyright based authorization from the Standard Text can allow another party to infringe for any purposes in producing a system which is patent protected, a process which functionally sets aside all of a patent protections on a given technology or system.

126. The IETF didnt react well to be told formally through their Intellectual Property Rights website Plaintiffs owned this IP and that it was not being granted to them under their licensing models. They reacted badly and ejected Glassey on a pretense and made the IP as virtually ubiquitous as any could be today, and in doing so they have deprived the Plaintiffs of both Patent Controlled and Copyright Controls to their own Intellectual Properties while creating billions of infringers today.

COUNT SEVEN

(Declaratory Judgment – Patent Fraud, Unauthorized Filing of US6393126)

127. Plaintiffs restate the above as if set out fully herein.

128. Plaintiffs are the sole owners of Trusted Timing System Technology with the limited provisions of the three components licensed for US use only in the Settlement Agreement. Datum filed a patent against the entire Trusted Timing Infrastructure IP library listing Erik Van Der Kaay (US6393126) as the inventor with several of his engineers including those involved in the standards agency frauds alleged in COUNT SIX previously.

129. The Patent was issued in the US and in a number of other countries which are similar to those which the US6370629 patent was filed in.

130. Nothing in the Trusted Timing Infrastructure settlement contemplated Datum filing a patent listing itself as the creator of the technology, something blatantly

false based on the settlement agreement alone. This is fully supported by the Toby Gellman appellate ruling.

131. The amount of the TTI which the patent was issued against like the 2001 changes to '629 included large amounts of Glassey owned IP from the CertifiedTime Inc Bankruptcy (01-54207-MM - San Jose). Additionally aspects and IP controlled by 629 was added to the 3126 patent without authorization to get it issued as well.

132. We therefore seek an order to the USPTO to remove Erik Van Der Kaay's name from this patent as well as the others and to replace them with Plaintiff Glassey exclusively. Likewise there is no assignment of this patent to Datum corporation planned for or authorized in the settlement so we ask the Court to order the Patent Office to reassign this patent with full rights therein to Plaintiff Glassey;

COUNT EIGHT

(Declaratory Judgment –International transfer of TTI Intellectual Properties to set aside the Settlement Agreement, Unauthorized removal of TTI from US Courts Jurisdiction)

133. Plaintiffs restate the above as if set out fully herein.

134. Plaintiffs are the sole owners of Trusted Timing System Technology with the limited provisions of the three components licensed for US use only in the Settlement Agreement.

135. Settlement Terms are permanent per section 3.15 and 8.4 of the DDI Settlement contract and require continuous reporting on licensing, and further per sections 8.1 that "any and all disputes for any and all users of the IP sublicensed in the settlement do so in the courts and under the laws of the State of California" and that per

section 8.3 these terms are binding on all successors in any form (including but not limited to end-users of the product and any intermediary distribution framework set up to support them).

136. Datum corp at some point entered into a Joint Venture with a Cambridge England company called nCipher based on an introduction Plaintiff Glassey had made several years previous.

137. Datum transferred the protected IP of the TTI settlement to nCipher who took it to England and then brought the product back into the US as an English Copyright and Patent based Product under their name. This violated the terms of the settlement agreement.

COUNT NINE
(Declaratory Judgment –Mandatory Acceptance Requirements for transfer of US6370629 to Microsemi)

138. Plaintiffs restate the above as if set out fully herein.

139. Per section 8.4 each party assuming a control role for the licensing must notify the Plaintiffs of this within the 14 day period agreed to between Datum Attorney John Cannon and Plaintiffs as documented in the Cannon South African Patent Instance filing release letter.

140. Plaintiffs request the court issue a declaratory judgment that Microsemi breached this key term and strip Microsemi of the US6370629 patent awarding it in full to Plaintiffs and damages therein as the court sees fit including fraud losses therein.

WHEREFORE, Plaintiffs Michael E. McNeil and Todd S. Glassey request this Court to enter judgment in their favor on all counts, to award them damages in an

amount to be determined at trial, to award them declaratory relief to the effect that the 2001 Application Rewrite and the '629 Patent contain Phase II Technology which was not identified in the 1998 Patent Application, to award them relief in regard to their US3693126 damage claims, and issue formal notice to the IETF and Internet Society "that all of their standards must come into immediate conformance with US DMCA provisions and best practices of a Global Standards Org with regard to its IP Management Practices" meaning there must be a take down policy implemented in all existing IETF standard by order of the court "no matter what contractual agreement exists between the authors and the IETF as to that IP's licensing", and to award Plaintiffs any other relief to which they are entitled, including but not limited to legal fees herein.

Respectfully submitted,

Todd S. Glassey, In Pro Se

tglasssey@earthlink.net

305 McGaffigan Mill Road
Boulder Creek CA 95006
Telephone: (408) 890-7321

Jury Demand

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all issues so triable.



Counsel for Plaintiffs

Michael M. Neal 8/7/2014

Declaration pertaining to Modification of the Patent

141. The 2001 Patent Application Rewrite modified Claim 1 to insert Phase II Technology as indicated below in bold and italics:

A method for controlling access to stored information comprising:

Determining an actual geographic position where said stored information is located based on signals received at a receiver supplying reliable position information;

Cryptographically signing said actual geographic position with a receiver encryption key;

Verifying the signature of said actual geographic position;

Determining that said actual geographic position is within a geographic region within which access to said stored information is authorized; and

Permitting access to said stored information.

142. The 2001 Patent Application Rewrite modified Claim 12 to insert Phase II Technology as indicated below in bold and italics:

Apparatus for controlling access to stored information comprising:

A receiver supplying reliable position information for determining an actual geographic position where said stored information is located, ***wherein the receiver comprises a receiver encryption mechanism providing a receiver encryption key for cryptographically signing data comprising the actual geographic position;*** and

A computer for comparing said actual geographic position with a geographic region within which access to said stored information is authorized,

Wherein said computer permits access to said stored information if said actual geographic position is located within said authorized geographic region.

143. The 2001 Patent Application Rewrite modified Claim 18 to insert Phase II

Technology as indicated below in bold and italics:

A method for controlling access to a subset of files belonging to a larger set of files of stored information comprising:

Associating a unique file encryption key with each file from the larger set of files and encrypting the files using the associated encryption keys;

Associating each of the files from the larger set of files with at least one authorized geographic region within which access to said stored information is authorized;

Determining an actual geographic position where said stored information is located based on signals received at a receiver supplying reliable position information;

Cryptographically signing at least the actual geographic position at the receiver;

Verifying the signature of the actual geographic position;

Comparing said actual geographic position with said authorized geographic region; and

Providing a file decryption key which authorizes access to said subset of files, provided that the actual geographic position is located within the authorized geographic region for the files belonging to said subset of files.

144. The 2001 Patent Application Rewrite modified Claim 21 to insert Phase II

Technology as indicated below in bold and italics:

A method for controlling access to stored information comprising:

Determining an actual date or time at the location of said stored information based on signals received at a receiver supplying reliable time information;

Cryptographically signing at least the actual date or time at the receiver;

Verifying the signature of the actual date or time;

Comparing said actual date or time with a predetermined date or time interval at which access to said stored information is authorized; and

Permitting access to said stored information if said actual date or time occurs within said authorized date or time interval.

145. The 2001 Patent Application Rewrite modified Claim 25 to insert Phase II Technology as indicated below in bold and italics:

A method for controlling access to stored information comprising:

Forming a policy associating said information with authorized geographic regions and authorized time intervals;

Cryptographically signing said policy and said information;

Storing said signed policy together with said signed information;

Providing a password for unlocking said policy;

Determining an actual geographic position where said stored information is located based on signals received at a receiver supplying reliable position information;

Determining an actual time;

Cryptographically signing at least the actual geographic position and the actual time at the receiver;

Verifying the signature of the actual geographic position and the actual time;

Comparing said actual geographic position and said actual time with said authorized geographic regions and authorized time interval of said policy; and

Permitting access to said stored information if said actual geographic position and actual time falls within said authorized geographic regions and authorized time interval of said policy.

146. The 2001 Patent Application Rewrite included a new independent Claim 29 which was entirely comprised of Phase II Technology:

A method for controlling access to stored information, the method comprising:

- (a) Determining a position;
- (b) Cryptographically signing data comprising at least a representation of the position;
- (c) Verifying the signature of the data comprising at least a representation of the position;
- (d) Determining that access to the stored information is authorized at the position;
- (e) Permitting access to the information based at least upon (c) and (d).

// Todd S. Glassey - 8/6/2014

EXHIBIT B

RECEIVED
FILED
AUG 25 2014

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

(San Francisco Division)

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

And

MICHAEL E. MCNEIL, In Pro Se
PO Box 640
Felton CA 95018-0640

Plaintiff,

vs.

MicroSemi Inc; The IETF and ISOC, and
the US Government and Industry
partners (including but not limited to
Apple, Cisco, eBay/Paypal, Google,
Juniper Networks, Microsoft, NetFlix,
and Oracle), USPTO ALJ Peter Chen Esq,
and two individuals (Mark Hastings and
Erik Van Der Kaay) as "NAMED DOES"

Defendants.

CASE NO. CV-14-3629-EDL

JUDGE E. D. LaPorte, Courtroom E,
15th Floor USDC San Francisco

COMPLAINT

Sherman Act violation, Fourth, Fifth,
Seventh and Fourteenth Amendment
Violations; Foreign Antitrust Act
violation; RICO Act claims against
Microsemi and IETF; Copyright Fraud
(IETF); Patent Infringement (IETF et
Al.); Tortuous Interference; Assorted
Patent (Fiduciary) Frauds;

Illegal use of FISA Act provisions in
those violations by Defendant USC

Jury Demand Endorsed Hereon

For this Complaint, Plaintiff Todd S. Glassey and Michael E McNeil state as follows:

Defendants, Does, Patents, and Settlement List

1. Plaintiffs are individuals who were, for all times relevant hereto, residents of Santa Cruz County, California.

2. Defendant Microsemi, Inc. ("**Microsemi**"), is, on information and belief, a Delaware corporation with its principal place of business in Aliso Viejo California. This under Bivens includes the "unknown Officers and those controlling the operations of the Defendant Microsemi" as individuals under the Bivens precedent¹.

3. Defendant Symmetricom, Inc. ("**Symmetricom**"), was, on information and belief, a Delaware corporation with its principal place of business in Irvine California.

4. Defendant Symmetricom did, on information and belief, acquire the assets and liabilities of Datum, Inc. ("**Datum**"), in 2002 through a Merger creating a new Symmetricom Corroboration as the successor to Datum.

5. Defendant Erik Van Der Kaay ("**EVDK**") is by information and belief the CEO and Chairman of the Board of the Datum Corp (the umbrella Corp holding the Business units of Datum and its acquired companies);

6. Defendant Datum did, on information and belief, acquire the assets and liabilities of Digital Delivery, Inc. in or about July 1999.

7. Defendant Digital Delivery Inc ("**DDI**") is a Massachusetts based corporation which Plaintiffs retained for Patent Agency legal representation;

8. Defendant Mark Hastings ("**Hastings**") is by information and belief the President and Founder of DDI and later was made the President of the BanCom (Bandwidth Compression) division of Datum Inc;

9. Both Defendants, Hastings and Van Der Kaay are direct signatories to Glassey and McNeil contract documents with both corporations and both names

¹ (*Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971))

appearing on the DDI settlement and Van Der Kaay's on the TTI Settlement as well herein;

10. Defendant Microsemi ("**Microsemi**") is, on information and belief, the successor in interest for any liabilities of Symmetricom, Datum and DDI to Plaintiffs. As such any use of the predecessor name for Microsemi is only intended to indicate the time frame for the action or claim in this ongoing fraud and Sherman Act Violation.

11. The Defendant Internet Engineering Task Force ("**IETF**") is on information and belief, a Industry-Wide Technology Standards Collective and is operated under the banner and law of the US as a subdivision of the Washington DC Corporation called "The Internet Society".

12. The Internet Society ("**ISOC**") operates the IETF is as the world's Global Standards Organization for the Internet and it is the IETF who has produced the majority of the network standards that applications which infringe on the rights here were written from.

- a. This definition of the IETF includes their management under Bivens and membership in the entire IETF as a whole and in several particular groups including but not limited to the **IETF Intellectual Property Rights Working Group (IPR)**, **IETF GeoSpatial Controls Working Group (GeoPriv)**, the **IETF or Generic Network Working Group (IETF@IETF.ORG)** where everyone talks about everything and time-related ones in both **PKIX WG** (the PKI working group areas) and those pertaining to other protocols like **Secure DNS (DNSSEC)** which uses the Infringing IP extensively as just one of many examples of IETF infringements;

13. The Defendant Internet Society ("**ISOC**" - www.isoc.org) itself includes such other child-organizations as the Internet Corporation for Assigned Names and Numbers ("**ICANN**") and the American Registry for Internet Numbers ("**ARIN**") and its foreign instances.

14. Because of the ISOC and IETF dependence on Computers running "Infringing Networking Drivers and Applications" ("**INDA**") the ISOC as well as the IETF, the ARIN, the ICANN, and all other operating infrastructure itself are named collectively as *members of the ISOC Family herein*;

15. And that this matter pertains as such to the ISOC all of its many arms and their publications as well as all electronic events performed online by them since the Cease and Desist Order was served on ISOC and its IETF operating unit through their IETF IPR Filing Process in 2004 (their method of service); As such that the IETF and ISOC are named actual defendants to the matter herein;

The following Parties are NAMED AS DOES in accordance with provisions of the BIVENS² ruling

16. The Defendant "United States Government" ("**USG**") from Legislative to Administrative branches, because of its dependence on Computers running "INDA" is named as a Defendant DOE and since the full scope of the names therein are unknown to the Plaintiffs at this time this naming convention meets the strict DOES limitations for the US District Court';

² *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971),

17. Further the following Federal Agencies and Roles are known but the parties filling those roles are unknown at this time and so they are also identified directly as DOES in this matter;

- a. The US Department of Commerce ("**DoC**") and its three key subdivisions (**US PTO** - Patent and Trademark Office, **US NTIA** - National Telecommunications Infrastructure Administration, and **US-NIST** - The US National Institute of Standards and Technology **and in particular its Information Technology Laboratory (NIST-ITL)**) are entities of the United States Government;
- b. **Defendant Peter Chen Esq.**, under Bivens is named as an actual defendant and not a DOE although he now is employed by USPTO, and so is named both under their naming as a DOE and as a real person; Additionally we name Defendant Peter Chen's Lawfirm at the time of the alleged acts herein of Lathem Watkins LLP as a DOE based on Bivens standing for the parties within the firm actually involved (a matter which Discovery will properly disclose);
- c. The **US Department of Energy** as a consumer in operating the US Smart Grid and various other research projects which make it an infringer;
- d. The **US Department of Transportation** and the **US FAA** Flight Tracking and Messaging Systems using infringing technologies nationally herein;
- e. The **US Treasury** as a consumer of the infringed properties and the oversight provider for its agencies the **SEC** as well as the **IRS**;

- f. The **US Department of Defense ("DoD")**;
 - i. Any and all parties (**Boeing, Macdonald/Douglas, Lockheed Corp, General Atomics, et Al**) building or selling Drones or components thereof to the US Government;
 - ii. Any and all parties building selling or transporting **Ballistic Sensor Fused or Controlled Munitions or Munitions Delivery Systems** including but not limited to those ballistic devices used to place objects into low and medium orbital tracks;
- g. The **US Intelligence Community** (all agencies and those attached therein).
- h. **The Office of the President of the United States of America ("POTUS") and the operations of the Whitehouse Webserver itself;**
- i. The **Honorable Mr. Jerry Brown, the Governor of the State of California and the State of California itself under** 42 U.S.C. § 1983 and its provisions for Civil Litigation against a State under the ***Enforcement Act of 1871*** and other statutes;

Industry Members of the IETF and ISOC

18. The following are named members of the IETF who all either both use and operate within the IETF itself a formal presence and who both use these controlled Intellectual Properties controlled under the "TTI and DDI Settlement Documents" inside their products and corporate operations both; They include but are not limited to

- a. **Apple Corp**, A Delaware Corporation including all of its external and foreign corporations or assets;
- b. **Cisco Corp**, A Delaware Corporation including all of its external and foreign corporations or assets;
- c. **eBay and Paypal**, each a Delaware Corporation including all of its external and foreign corporations or assets;
- d. **Google**, A Delaware Corporation including all of its external and foreign corporations or assets; and all of its sub-division and free-standing corporations operated outside of the Google brand;
- e. **Juniper Networks**; A Delaware Corporation including all of its external and foreign corporations or assets;
- f. **Microsoft Corporation** a Delaware Corporation and all of its free-standing business units and external corporate assets;
- g. **and Oracle Corp**, A Delaware Corporation including all of its external and foreign corporations or assets;
- h. Additionally there is one other DOE to name as a corporation; That being The **Thales Group ("Thales")** (a Delaware Corporation) the landed US Base of the larger Defense Systems contactor "The Thales Group" of Cedex France, and its **eSecurity Division**, A Delaware Corporation called **"E-Security, Inc"** (nee "nCipher Inc" of Cambridge England).
- i. The eSecurity Division of the Thales Group US operations is located in the State of Florida; and claims against Thales Group and in particular

to the eSecurity Division pertain to its use of TTI Settlement IP and breach of the TTI Settlement through its partner Microsemi;

PATENTS

19. US6370629 ("**629**") the US patent filed in Plaintiffs behalf by Mark Hastings of DDI, **EP-o-997-808A3**, the Abandoned instance of the US6370629 filed in the EU, **BR9904979** the abandoned instance of '629 filed on Plaintiff's behalf in the Nation of Brazil; **CA2287596** is the abandoned filing of US6370629 in the Nation of Canada, as **2000163379** is the number of the '629 filing in Japan, and finally the South African filing **ZA1999/06799**
20. US6393126 (aka "**3126**" also known as US 20020056042 A1) "a System and methods for generating trusted and authenticatable time stamps for electronic documents" ("**3126**"), the US patent filed by EVDK showing himself as inventor of IP "he licensed limited derivative uses of from Master Designs for the TTI" belonging to Plaintiff Glassey; Likewise **CA2398415** (CAI2398415 A1) is the unauthorized filing of US6393126 in the Nation of Canada, it exists in the EU (**EP 1279287** A1) and was expanded by re-filing as the **US 20020056042 A1 WO** patent application which did issue;

SETTLEMENT AGREEMENTS

21. **DDI Settlement** - pertains to the Pre-paid legal service agreement with DDI (the Co-Inventor Agreement) and Datum's limited use of the patents' protected IP while its continuing role as Fiduciary persists. The Settlement

Agreement is the other half of the Co-Inventor Agreement Document Pair that is described in detail in the Co-Inventor Agreement.

22. **TTI Settlement** ("**TTI**") - pertains to the Datum use of the Glassey TrustedTiming Infrastructure and its limited use of the IP in the United States and State of California legal requirements therein.

23. **Co-Inventor Agreement** - The PrePaid Legal Service Agreement and Patent Assignment Documents (self explanatory) - the original Co-Inventor Agreement to was used to create a patent filing, which became the shared use patent US63709629 with DDI and its successors as the permanent fiduciaries in charge and responsible for the costs in those actions.

JURISDICTION AND VENUE

19. This Court has original subject matter jurisdiction over this suit pursuant because of a number of issues the first of which is that this matter pertains to 28 USC § 1338 because the matters in it relate to patents, International filing of patents and copyright infringements; It also relates to Sherman Act and rulings from the US Supreme Court (MGM Studios v Grokster) and other key rulings which State Courts do not have the authority to apply in this matter.

20. This subject matter pertains to the use of the US Foreign Intelligence Service Act to create a set of "Impossible hurdles" for Plaintiffs to cross to bring this into Federal Court which would stop anyone retaining private counsel through the service of a FISA Act Warrant or National Security Letter in the matter herein;

21. This Court has subject matter jurisdiction over the remaining claims at issue in this suit pursuant to is supplemental jurisdiction as codified by 28 USC § 1367 because they form part of the same case and controversy as those claims relating to patents and their infringement through licensing issued via copyright in Global Network Standards for the use of these intellectual properties.

22. This Court has personal jurisdiction over this matter because the Plaintiffs reside in this judicial district and a substantial portion of the events below took place in this district.

23. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts or omissions giving rise to the claims at issue in this dispute occurred in this district.

24. Additionally under the construct of ***Subject Matter Jurisdiction***, because this case uniquely involves both US and a number of both legally and illegally filed International Patents it is both a Sherman Act and the Foreign Antitrust Act with their provisions which now control large parts of the US National Critical Infrastructure this case can only be heard before the US District Court since no State Court has authority to issue Orders against the US Government for patent and international antitrust matters.

25. Finally under Jurisdiction, this matter asks the US District Court a unique and novel question of Federal Law "as to whether Patent Protections in an issued Patent can be set aside by a copyrighted Network Technology Standard under the Defendant IETF's claim that 'Copyright Section 107 Exemptions also allows them to infringe on patent protections on software products they designed the very uses for themselves'".

26. The assertion of this litigation is that this is a statement which on its face directly violates the US Supreme Court ruling in MGM Studios v Grockster while they (the IETF) continue to publish under their own copyright against their use of the technology, a license we allege is "intended to cloud or make impossible to enforce **any Software patent protections globally** against those IP's used without authorization in those standards" and on which they the IETF have since made the world's computers dependent.

27. This question is amplified by the commentary that the IETF in fact uses this same Intellectual Property in the form of programs inside its infrastructure without authorization daily to operate the IETF's computers, and that this was done after codifying it into the global standards for all Local Area Networking today.

28. The question posited on the court by this suit is now that this was formally done to the Plaintiff's IP's and re-licensing enforcement rights by Defendants Microsemi and IETF and their third-party infringers, the question therein before this court is "what are Plaintiffs' recourse herein?".

STATEMENT OF OPERATIVE FACTS

29. This Complaint is being brought in the United States District Court because there are multiple issues in dispute between multiple parties including the US Government and a Global Standards Organization which require the Court to construe the claims of certain US Patents and a set of alleged frauds therein at the Fiduciary level, the relationship of those Patents to US Copyrights when a Global Standards Agency takes that IP and weaves it into the process descriptions of their networking protocols.

30. And finally the effect under MGM Studios v Grokster and other precedents pertaining to Intellectual Property protections what the recourse is against the Standards Agency and their Membership for these actions which force anyone implementing programs that meet that standard to infringe.

31. And additionally for their (the Standards Agency and its parent the ISOC) use of those infringing programs in their own operations.

32. The allegation of the claims is that because the IETF further encoded those protected methods from a US or Foreign Patent into their Standard, this makes anyone using that standard equally culpable for their actions as third-parties to the alleged conversion of private property this suit alleges.

The Complaint

33. This complaint is based on the complaint, supporting evidence exhibits, declarations and memorandums of points and authorities, precedent law, US national IP Policy, *and is fully supported by the US Government mandatory requirements per the TRIPS/PCT treaty agreements.*

34. Additionally aspects of this matter pertain to "a set of alleged frauds which the primary defendant Microsemi committed with in concert with the Global Standards Organization IETF (the Internet Society) to prevent Glassey and McNeil's enforcement demands previously that the IETF and everything it produced since 2004 is based on an active infringement in its operations" and they cease and desist any use of the IP. As such a subsidiary claim against all of the online networking standards produced is included as well.

Defendant IETF and their use

35. The Defendant IETF (The Internet Engineering Task Force) is a global standards organization who operates their infrastructure across the Internet as part of their charter so they use all of the standards they create in the form of programs and infrastructure inside their frameworks. The IETF is an operating unit of the Internet Society and they bear full financial responsibility for its operations and these alleged frauds herein we assert.

36. The IETF has no authorization to use the IP for its own uses and because of that it "likewise cannot publish across its framework anything which infringes because it cannot use that IP inside its own framework".

37. This then is the Catch-22 the IETF has created. They can no-longer operate without infringing the Phase-II Technology Licensing Rights the Plaintiffs are the sole owners of because it is inside the machines they created the standards for.

38. To summarize the claims against IETF and ISOC: The unauthorized use of the Patent-Protected Intellectual Properties is then alleged in both 1) the IETF operating infrastructure and then 2) as direct additions to their documents themselves as the "methods and processes of the protocols they are standardizing"; We further state that this has already been done for a number of the World's Internet Standards such that it created three billion daily infringers; the net-effect is this single Patent now controls (or there are claims for) most all online commerce globally and the loss amounts respective of that include but are not limited to the direct infringements "for any and all Local area and Internet Application Systems" in use globally today.

39. The functional result is that everyone using the Local Area Networking Protocols outside the Internet is also an infringer of those same IP rights;

40. That because of the alleged fraud inside the very standards process itself, an action which could have been stopped by defendant Microsemi as far back as 2004 when the first "Acknowledgement of Glassey and McNeil rights requests were submitted to then 'Symmetricom Corp' as the predecessor to Microsemi", both the IETF (and its membership) and Microsemi equally bear responsibility under the precedents set in MGM Studios v Grokster and others, and are liable herein for any and all damages resulting from their collective and individual actions.

Microsemi blocked verification of all of Plaintiffs verification requests

41. Rather than perform its role under the contract Symmetricom Staff refused to confirm or even respond to the parties we requested they confirm the settlement and our rights to.

2013/2014 Breaches

42. Finally that to Transfer the Settlement Agreement and the Role of Fiduciary codified in it that (see CONTRACTS/DDI-Settlement) Microsemi must formally and publicly assert its liability or no such transfer occurs. Microsemi has refused all communication and demands it agree to the terms of the Contract as the Settlement Agreement requires and that has created a new cause of action in this matter in 2014 which tolls the statutes on all other acts in this matter as well.

43. As such it is in breach of the Settlement Agreement as well currently supporting these claims.

HISTORY: Previous Litigation

44. Prior to the filing of this Complaint in this Court, the Plaintiffs and Symmetricom were parties to a California Superior Court suit captioned *Michael E. McNeil, et al. v Book (Symmetricom) et al.*, which was dismissed without prejudice to any of the claims therein and proceeded as that Court's Case No. CV 165643 (the "State Court Lawsuit").

45. This filing is the transfer of that lawsuit to the Federal Jurisdiction in full because the State Court Lawsuit could not continue to be prosecuted in California Superior Court because, as that case developed, it became apparent that the California itself as the State was conflicted as a major infringer and further the Superior Court would be required to construe "US Patent and simultaneous copyright claims" which no Federal Court has ruled in yet, and perform this ruling against parties in a number of jurisdictions (*the IETF and its international members) to render any judgment on the claims for relief Plaintiffs brought, and that the California State Court lacked the subject matter jurisdiction to do so.

46. Further since the Federal Government is the signatory to the TRIPS agreement the international nature of the abandoned instances of US6370629 patents filed in Japan, Brazil, Canada, South Africa and the EU are only actionable under the TRIPS treaty in the US and only the US District Court has standing in an international treaty.

HISTORY: Plaintiffs' Relationship with Datum

47. In or about October 1997, Plaintiff Glassey approached Datum through Davey Briggs VP of Marketing for the Beverly Massachusetts division of Datum. The purpose of the conversation was to retain Datum to "manufacture a component of the time controls" for an email and document control gateway of Glassey's design. The design was called the Trusted Timing Infrastructure and creates a set of evidence-to-transaction models and the technology to implement them.

48. Initially Datum said "no to building the high-end components of the system" but was very interested in the component level Trusted Local Clock Module as a potential mass-market addition to Datum's existing Board Level Timing Products so they referred GLASSEY to the San Jose California division called BANCOM.

49. At Bancom/Datum Glassey interfaced initially with Mitch Stone ("**STONE**") the VP of Marketing; Glassey's request to Datum if he was right would open new end-user and OEM markets to Datum in the board level timing products area and to further to that Stone opened detailed market analysis discussion between Plaintiff Glassey and Datum, concerning whether Datum and Glassey might undertake broader business efforts together; To allow free and open discussion about Glassey's IP Datum and Glassey entered into a mutual nondisclosure agreement in November 1997 (the "**Datum NDA**"). Mitch Stone processed that NDA.

50. In the months following the execution of the Datum NDA, Glassey and Datum (through Mitch Stone as the principal point of contact) had a variety of conversations and did a variety of industry analysis efforts to determine the total potential of the market sector for this time-stamping evidence system; this effort

included two road trips on which Glassey and Datum VP of Marketing Mitch Stone ran the customer survey with exciting results.

51. The next step was a meeting "with the division presidents of all of Datum and a Board Meeting" which was to happen at a local trade show in Atlanta; to Attend the meeting Glassey was flown out to present the total of the potential to the Board and officers of the corporation for the Trusted Timing Infrastructure components he asked them to build for him. The meeting produced full approval for the joint-development effort.

52. At this point Datum initiated aggressive discussions with Glassey about product design of their systems and how his infrastructure could be used to advance their existing BC635 GPS based timing card as a stand alone and clustered time service module.

53. This excited Datum CEO Erik Van Der Kaay (EVDK); EVDK called Glassey and told him the deal was on. He asked Glassey to both incorporate and bring in at least one more engineering member for his team and promised both guaranteed financing through a monthly payment process to let GMT just focus on the engineering as well as longer term reseller status.

54. To meet that demand, in early 1998 Plaintiff Glassey was joined in his commercial efforts by Plaintiff McNeil in Glassey's new company known as Glassey-McNeil Technologies or "**GMT**".

55. To support Datum running Payroll for GMT on or about May 4, 1998, Plaintiffs each executed a consulting agreement with Datum for the purpose of securing certain technical consulting services (the "**Datum Consulting Agreements**"), true

and correct copies of which are attached as Exhibits CONTRACTS:Glassey and Exhibits CONTRACTS:McNeil hereto.

56. The Datum Consulting Agreements were effective from May 4, 1998, to July 4, 1998, and during that period Plaintiffs provided services to Datum exclusively relating to market analysis to support Datum's developing e-commerce division.

57. Upon the expiration of the Datum Consulting Agreements, Plaintiffs and Datum agreed to continue to work together without further written agreements with the understanding, based on the existing Datum NDA, that Plaintiffs would own any and all intellectual property developed by them or shared by them during the term of the continuing relationship and that Plaintiffs would be independent contractors for Datum.

58. Among the tasks Plaintiffs agreed to take on as independent contractors for Datum after July 4, 1998, were the identification of potential acquisition targets for Datum as it sought to expand its e-commerce business.

HISTORY: Plaintiffs' Relationship With DDI

59. From approximately December 1997 onward, Plaintiffs worked to develop other relationships in the industry for the purpose of commercializing their time control technologies.

60. One of the companies that Plaintiffs developed a relationship with was Digital Delivery Inc ("DDI"). Glassey and DDI President Mark Hastings were talking about adding some timing controls to DDI's product suites and so then entered into a Non-Disclosure Agreement (Jun 1997) to further those discussions.

61. Later but under the NDA Glassey disclosed the scope and design of his GeoLocation Controls and Location Based Policy Services to Hastings as his new patent

application; This conversation took place in the employee second floor lounge at Westlaw Main with Westlaw Employee Ruven Schwartz Esq and Datum VP Mitch Stone present. Hastings had accompanied Glassey and Stone to Westlaw to discuss time services and Glassey's Trusted Timing Infrastructure with them as a product potential.

62. Hastings was excited about the idea of using secure time and location information (physical, logical or virtual) as a control aspect of a policy switch. This can be used for many other key applications as well so he became very aggressive with Glassey about getting these 'new features' patent protected and added to Confidential Courier at all costs.

63. One weekend in later August of 1997 Glassey was approached by DDI president Mark Hastings about his (Hastings) acting as Glassey's Patent Agent for the filing of the location based service patent. Glassey initially didnt trust the situation and because Hastings was formally represented by Richards and Fish and they would be representing Glassey before the PTO through Hastings it seemed believable.

64. There were numerous discussions between Glassey and Hastings about this including one key one where it was finally agreed that "with Richards and Fish as counsel of record that Hastings could represent Glassey before the PTO".

65. Under the NDA between Glassey and Hastings, the Plaintiffs turned over the initial Intellectual Properties to the Agent (Hastings and DDI) for the creation of the filing documents for the USPTO;

66. At this Time DDI president Mark Hastings and his counsel from Richards and Fish approached Glassey with a new plan. The "new plan" was that rather than Hastings filing a new patent for Glassey which he would sublicense from Glassey he

would file an amendment to the one he already had and Glassey would share the enforcement rights against its IP through a subsidiary agreement;

67. This was a 100% reversal of the roles under which the original agreement was consummated. Because of this Glassey again was very uncomfortable about and said no initially; it was only after a number of further conversations and Glassey's being assured by Richards and Fish ***the patent would issue quickly*** Glassey agreed.

68. Thus the amended instance of the Hastings "Confidential Courier" patent ("992") was filed in 1998; Everything was fine initially although Glassey and McNeil were concerned about how little of the original ((2 technology one could identify in the filing but it was early in the process and the initial Examination was a year away or so Glassey was told so we just waited.

69. As part of his work with Datum Glassey had introduced Hastings to Datum formally; In early 1999 things changed.

70. Hastings immediately stopped answering questions about the patent's filing and in July in violation of the Co-Inventor "E Assignability Section Hastings reassigned the patent to Datum and sold them Digital Delivery Inc taking a job replacing the then incumbent president of the BANCORP Division of Datum where Glassey's work was done.

71. As to how he did that when Richards and Fish filed the patent originally they omitted the agreement which said the assignment was only valid for one year (in the Co-Inventor Agreement) from the filing and improperly filed it as ASSIGNED instead of CONDITIONALLY ASSIGNED. This allowed Hastings to sign on the reassignment without Plaintiffs Signature. This was corrected with the attached EXHIBITS: PTO-Correction-to-629 (USPTO correction to original filing status).

72. Thus the Federal Record for the original filing was finally corrected on August 6th 2013 to reflect the original assignment as conditional; Glassey's sole purpose for retaining DDI was to get a low cost guaranteed filing in half a dozen jurisdictions and to get the patents issued as soon as possible. The new amended instance of the original DDI patent was to be filed with U.S. Office and the foreign instances agreed upon later (Brazil, EU, Japan, Canada, and South African) as the **Controlling Access Patent** and DDI and Plaintiffs sought to formalize an agreement which would allow for the most prompt filing of the application for the Controlling Access Patent.

HISTORY: The 1998 Pre-paid Legal Services Contract ("The Co-Inventor Agreement")

73. To enable this global patent filing activity effective on or about October 26, 1998, Plaintiffs and DDI entered into a "pre-paid legal services" agreement known as the **Co-Inventor Agreement**, a copy of which is attached hereto as Exhibit:Co-Inventor-Agreement.

74. The Co-Inventor Agreement retains Hastings and his company Digital Delivery Inc of Massachusetts ("DDI") to act as Plaintiffs' Patent Agent with full legal control and power of attorney relative to the limited area of patent filings.

75. According to Recital D of the Co-Inventor Agreement, its purpose was:

[T]o allow the Controlling Access Patent application to be submitted as early as possible and prior to a definitive agreement between the parties with respect to each party's rights to exploit the Controlling Access Patent, the respective mutual and exclusive rights to the underlying or derivative technology, methodology, or other patentable subject matter contained or referenced in the Controlling Access Patent, and the compensation to be paid by

Digital to Glassey-McNeil for assignment of certain rights therein to Digital.

76. Recital A of the Co-Inventor Agreement commemorated DDI's ownership of the Confidential Courier product and its underlying patent ('992 patent). This is very important when considering how much of the underlying intellectual property from the original patent went into the filing or amendments to US6370629, a number which approaches zero in retrospect, meaning all of US6370629 is in fact PHASE-II technology;

77. Paragraph 1.C. of the Co-Inventor Agreement commemorated that Plaintiffs developed and provided to the Controlling Access Patent application geolocation Controls and Location Based Services known as "**Phase II**" a Term of Art meaning a system providing both physical location information but also very accurate time with phase matching data for aligning cryptographic heartbeats across a network or distributed framework. One very powerful source (though only a single example) of providing such time and location data is obviously the US Governments GPS sources.

78. Thus "Phase-II" technologies provides for a new level of authentication over the basic services Hastings had built into his existing patent. From the data model perspective Phase-II technology represents an authentication schema concurrent with industry standards in cryptography³

79. Paragraph 2.A. of the Co-Inventor Agreement provided further that, "[DDI] acknowledges that the Phase II technology is solely and exclusively the idea and invention of [Plaintiffs]."

³ as an example we list one Phase II authentication schema description - "a cryptographic signing and verification process with the transmittal of time and geographic positioning information that allows a legally indemnifiable degree of trust to be established in the time and geographic positioning information thus conveyed." but there are a number of others as well.

80. The Co-Inventor Agreement was designed to be a work-in-progress agreement and was to be replaced in form by a larger agreement. One which codified Plaintiffs' rights to the IP and their third party enforcement rights (any and all uses) for the IP that they purchased the pre-paid legal services for.

81. The Co-Inventor Agreement explicitly contemplated that a future "definitive" agreement would be entered among the parties concerning the compensation to be paid to Plaintiffs as well as the parties' mutual and exclusive rights to the Controlling Access Patent within 365 days of the signing. At that time the Provisional Access and use Rights to both the original filing and Hastings' 992 patent became open.

82. Finally the last possibility documented in the Co-Inventor Agreement was a total failing on Hastings' part where both patents revert to shared by Plaintiffs as the superior rights holder in third-party enforcement of the patent-protected IP.

83. Two days after the Co-Inventor Agreement was executed, on October 29, 1998, the Controlling Access Patent Application (the "**1998 Patent Application**") was filed with the US Patent and Trademark Office ("USPTO"), a copy of which is attached as Exhibits:629-as-authorized hereto and in it McNeil and Hastings and his partner were added to the patent filing so the final title includes all four parties, Glassey as the principal inventor, McNeil as Glassey's senior Engineering Specialist, and Hastings and Willets for their work in the previous patent. As it happens though Willets was never on the original patent and as such shouldn't have been on the final filing as well. This then is allegedly yet another misrepresentation from Hastings in the filing of US6370629.

HISTORY: DATUM purchase of DDI violated the DDI/Glassey Contract "no transfer" terms

84. In violation of the IP transfer provision of the Co-Inventor Agreement Datum and DDI consummated a merger on or about July 29, 1999, whereby DDI became a wholly owned subsidiary of Datum upon which merger Datum became the successor-in-interest to all of the rights and responsibilities contemplated by the Co-Inventor Agreement. As such Datum became the Fiduciary although Glassey and McNeil were both very dissatisfied with the situation.

85. Section Five (5) of the Co-Inventor Agreement protects the Role of Fiduciary in what was called the Non-Assignability Clause; which was violated by Defendants and documented in their July 8K (Exhibits: CONTRACTS:CO-Inventor Agreement) report to the Securities and Exchange Commission of the Department of the Treasury, US Government. The section is excerpted here for reference. The reference is split across both Page 4 and Page five (5) continues with the text of section 5.

What it clearly says is ***that the Patent Ownership and the Role of the Patent Agent & Fiduciary here 'may not be assigned to any third party for any reason without a release from Plaintiffs'.***

5. NONASSIGNABILITY

Digital Patent Contract

The parties hereto have entered into this agreement in contemplation of personal performance hereof by each other and intend that the rights granted and obligations imposed hereunder not be extended to other entities without the other party's express written consent, except that Glassey-McNeil may transfer their interests herein to a corporation whose majority of voting shares are owned and controlled by them. This Agreement shall be binding and shall inure to the benefit of the parties and to their heirs, successors, and assigns.

No such release was ever asked for, contemplated by Plaintiffs or executed, and Datum's solution was simply to immediately attack its new "client" and sue GMT/Glassey and McNeil as individuals and withhold operating funds it as GMT's sole customer at the time owed the company to force an extorted settlement as reported in this complaint.

HISTORY: Robinson Letter

86. Immediately after the prohibited purchase of Digital Delivery Inc., Datum Corp fired Bancom Division President David Robinson (see Notice Letter Exhibits:ROBINSON LETTER where Robinson declares formally "Datum doesn't want your IP" letter from Robinson) and replaced him with Defendant "Hastings" (Mark Hastings).

HISTORY: The 1999 Settlements which Plaintiffs allege "were extorted from Plaintiffs"

87. In addition to Hastings coming on board as an officer of Datum two weeks later in August 1999 Datum without warning filed a lawsuit against Glassey and McNeil ("the dispute");

88. Datum, we allege "also as part of this 'covert plan to bankrupt and steal GMT's assets'" did fabricate claims and filed a California Superior Court Lawsuit against GMT and Glassey and McNeil as individuals; and we assert in doing so violated its role as the Fiduciary which it had to accept to move the patent to it as the "acquiring of any fiduciary responsibility contract" in the US requires;

89. this set of actions were a part of an Overall Plan we assert was created inside Datum by CEO Erik Van Der Kaay and furthered directly by officers of Datum and the Successors Symmetricom and Microsemi both.

90. As part of its manipulating GMT into being forced to accept its terms for settlement Datum froze all payments outstanding to Glassey and McNeil after they had just had Glassey expend significant amounts of personal money developing "designed market analysis and other marketing materials for them". The net effect was they as GMT's sole customer at the time functionally drove GMT into insolvency to extort the two settlement documents; as such they manipulated GMT and both Glassey and McNeil personally to the edge of bankruptcy to extort the two settlement documents, both of which they furthermore allegedly breached;

91. Further because these denial-of-rights actions are still being performed today in the new successor to the Contract, by their refusing to accept the role per the terms of the contract for its transfer to a successor of Symmetricom, they have become as culpable for the Damages as Van Der Kaay and Mark Hastings are for creating them in the first place.

92. Through this set of alleged set of actions by DATUM and Hastings/DDI , and with what turned out to be very bad legal advice from GMT-counsel Jason Book Esq, both Glassey and McNeil were "financially manipulated and coerced into accepting

the settlements that Datum Counsel John Cannon drafted, as such Datum was the sole architect of the forms and their contents in the two settlement documents".

In all instances Book esq. advised Glassey and McNeil that they had no rights and would need to take whatever settlement and scraps Datum was willing to throw to us.

HISTORY: Both Settlement Documents look almost identical

93. John Cannon Esq, Datum's attorney at that time created two settlement documents for this matter. One Settlement for Digital Delivery Inc and a second for the Consulting Work and the IP under it which is the subject of US Patent 6393126 called the TTI Settlement.

94. Both documents used the same template and numbering forms and were drafted by John Cannon Esq of Stadling Locca in Newport Beach California. Hence sections 8.x of the TTI settlement are almost identical to those in the DDI settlement.

HISTORY: 1st Settlement - Controlling Access (DDI Patent Agent services) Settlement

95. The two separate settlement agreements were simultaneously signed in late November 1999, one of which is at issue in this section of the lawsuit and is the so-called **Controlling Access Settlement** also known as the **DDI Patent Rights Settlement/management agreement**, a copy of which is attached as Exhibits:CONTRACTS-DDI-Settlement.

96. The Controlling Access Settlement is the specific document the Co-Inventor Agreement says will replace it in regard to its patent filing efforts.

HISTORY: 2nd Settlement - Trusted Timing Infrastructure (tti) Settlement

The second settlement, the TTI Settlement, is patterned after the first (DDI) settlement as was intended to cover the uses of the limited parts of the Glassey TTI service infrastructure that were the topic of the Settlement itself.

HISTORY: DDI Settlement Breach

97. The Controlling Access Settlement was intended as a cap or umbrella for other documents necessary to complete the deal and properly control the patents and the roles for both parties, but served as the “definitive” agreement between Plaintiffs and Datum concerning the initial compensation to be paid to Plaintiffs; it is very clear about who owns which scope of technology but Plaintiffs would have to wait to see in what form the final patent was issued. It is fully contemplated in 1998 by the Co-Inventor Agreement.

98. Paragraph 2.2 of the Controlling Access Settlement defined the “Controlling Access Patent” for purposes of that agreement to include the 1998 Patent Application as well as foreign patents pending Filing Services under the Fiduciary Role for the Patent Filing Agent herein.

99. Paragraph 2.3 of the Controlling Access Settlement defined “**Phase II Technology**” as:

The method of authentication, encryption and transmission of date/time and/or location data for the purpose of linking together two or more disparate electronic components, such that a trust model is established between them. Such physical elements must individually be capable of computational and cryptographic functionality, but computationally may be isolated from one another. Such electronic components must be physically secure, and communicate with each other over communications channel(s) which may themselves be insecure.

100. Phase II Technology included, and expanded, the technology identified as GPS Phase II technology which had been identified as the property of Plaintiffs in the Co-Inventor Agreement.

101. Pursuant to Paragraph 3.2 of the Controlling Access Settlement, Plaintiffs assigned "all rights, title, and interest" in the 1998 Patent Application and foreign patents based thereon to Datum.

102. However, Datum explicitly agreed in Paragraph 3.3 of the Controlling Access Settlement that Plaintiffs, "own[] all rights, title and interest in the Phase II Technology".

103. Paragraph 3.3 of the Controlling Access Settlement granted Datum a "perpetual, non-exclusive, irrevocable, assignable, sub-licensable, worldwide license for use of the Phase II Technology and derivatives thereof, with rights to sublicense, in connection with the limited scope of the DDI Confidential Courier product and its derivatives".

104. According to the foregoing provisions of the Controlling Access Settlement, Plaintiffs had exclusive rights, title, and interest to Phase II Technology, anywhere in the world, except for the limited rights which Datum had to use that Phase II Technology which was identified in the 1998 Patent Application.

105. Also according to the foregoing provisions of the Controlling Access Settlement which granted all ownership rights in Phase II Technology to Plaintiffs, subject to Datum's license, Datum had an obligation to protect and maintain any and all patents relating to Phase II Technology to which it was assignee.

106. Paragraph 3.6 of the Controlling Access Settlement further clarified the parties' intent that Plaintiffs would continue to have the right to commercialize Phase II Technology.

107. Specifically, Paragraph 3.6 memorialized that Plaintiffs agreed not to, "make, use, or sell any products developed using or derived from the Phase II Technology which also include the technology described in or covered by [Datum's existing Confidential Courier patent]" which under the terms of the original Co-Inventor Agreement was not jointly owned by both DDI and Plaintiffs in the agreement.

108. The above clarifies that Plaintiffs retained all rights to make, use, and sell new "Phase II" Technology which did not also include the technology described in or encompassed by the patent covering the Confidential Courier product; but since that patent (the '992 Patent) had already transited to a shared resource this provision of the settlement was found to be moot and unenforceable.

109. As of the effective date of the Controlling Access Settlement, the 1998 Application had been pending at the US Patent and Trademark Office ("PTO") unchanged from its October 28, 1998, filing date.

HISTORY: The 2001 Controlling Access Patent Application Expansion

110. After the parties executed the Controlling Access Settlement, Datum continued the prosecution of the Controlling Access Patent but ran into disapproval of the original expansion of Hastings' existing patent which was never communicated to Plaintiffs as required under section 8.7 of the Controlling Access Settlement.

111. At no time following the execution of the Controlling Access Settlement were Plaintiffs allowed to be involved in the prosecution of the Controlling Access Patent.

112. At no time following the execution of the Controlling Access Settlement did Datum ever attempt to include Plaintiffs in the prosecution of the Controlling Access Patent or advise them of the status of that prosecution.

113. Following a rejection of the developing application for the Controlling Access Patent once for anticipation and again for obviousness, Hastings under his role as the Bancom Division President at Datum radically expanded the amount of Phase II Technology in the independent claims pursued in the Controlling Access Patent application in its response to office action dated August 20, 2001 (the “**2001 Patent Application Rewrite**”), a copy of which is attached as EXHIBITS:2001-REWRITE hereto.

114. Plaintiffs did not discover the scope and effect of the 2001 Patent Application Rewrite until 2013.

115. As a result of the 2001 Patent Application Rewrite, each of the independent claims Datum pursued in its application for the Controlling Access Patent included vastly more of Plaintiffs’ Phase II Technology than they had ever agreed to license to Datum in the Controlling Access Settlement. This change is detailed in the declaration pertaining to unauthorized changes in the Patent which is attached as EXHIBITS:Patents-2001-rewrite hereto.

116. The consequence of Datum’s radical expansion of the amount of Phase II Technology in the 2001 Patent Application Rewrite was twofold: first, it was sufficient to convince the PTO to grant a notice of allowance of the application and paved the way

for issuance of the patent; and second, it had the effect of subsuming what remained of Plaintiffs' Phase II Technology into the issued Controlling Access Patent and foreclosed them from seeking that patent themselves.

117. The Controlling Access Patent ultimately issued as US Patent No. 6,370,629 (the "**629 Patent**") on April 9, 2002, a copy of which is attached as EXHIBITS:Conformed-Copy hereto.

118. The '629 Patent will be in effect until October 29, 2018.

119. The claims in the 2001 Application Rewrite numbered 12, 18, 21, 25, and 29 were issued verbatim as claims 11, 16, 19, 23, and 27 (respectively) in the '629 Patent.

120. The 629 Patent contained a significant amount of Phase II Technology which Symmetricom had never compensated Plaintiffs for and which Plaintiffs had free reign to license to third parties.

121. Datum, and on information and belief later Symmetricom, prosecuted similar patents to the '629 Patent in other jurisdictions around the world.

HISTORY: Symmetricom's Repudiation Of Plaintiffs' Rights To Phase II Technology

122. In the years following the issuance of the '629 Patent, Plaintiffs attempted to license their Phase II Technology, as embodied in the '629 Patent, to various third parties.

123. Datum (hereafter referred to interchangeably with its parent Symmetricom) interfered with Plaintiffs' attempts to do so by refusing to acknowledge the existence or validity of the Controlling Access Settlement until it produced a countersigned copy for the first time in February 2013.

124. On information and belief, Symmetricom further interfered with Plaintiffs' attempts to license their Phase II Technology by refusing to produce a countersigned copy of the Controlling Access Settlement to Plaintiffs, including refusing to do so in connection with the civil suits relating to the Controlling Access Settlement pending in California Superior Court since 2009 up until the foregoing February 2013 date.

125. These included their actions within the Global Standards Agency called the IETF (Internet Engineering Task Force) who was actively using the infringing IP inside of the systems they were publishing their standards upon as well as including the same infringing IP in the very standards themselves.

126. On information and belief, Symmetricom allowed foreign patents which covered Plaintiffs' Phase II Technology to lapse or become abandoned, despite having the duty to maintain those patents and having knowledge that Plaintiffs relied on them to do so. This constitutes a simple SHERMAN Act event and is clearly an Antitrust action.

COUNT ONE
(Breach of Controlling Access Settlement by
2001 Patent Application Rewrite)

127. Plaintiffs restate the above as if set out in full herein.

128. In 1999, Plaintiffs and Microsemi entered into the Controlling Access Settlement by which they contracted for Microsemi's license to the portion of Plaintiffs' Phase II Technology which was embodied in the 1998 Patent Application and which was incorporated in Microsemi's Confidential Courier .and its derivatives product line.

129. The Controlling Access Settlement is still in force and serves as the basis for Microsemi's continuing claim to be the assignee of the '629 Patent.

130. In 2001 Microsemi breached the Controlling Access Settlement, and its license to Phase-II Technology embodied therein, with its 2001 Application Rewrite to the USPTO, which resulted in the '629 Patent containing claims which read on portions of Plaintiffs' Phase II Technology never contemplated to be so-included by the parties to the Controlling Access Settlement and never licensed by Plaintiffs to Microsemi.

131. As a result of Microsemi's breach of the Controlling Access Settlement, Plaintiffs have been damaged in the amount of licenses they could have received from the Phase II Technology described in the 2001 Application Rewrite, their expectancy therefrom, and/or their lost profits from the 2002 issue date of the '629 through the life of the '629 Patent which will not expire until 2018.

COUNT TWO
(Breach of Controlling Access Settlement For
Failure to Protect Phase-II IP)

132. Plaintiffs restate the above as if set out fully herein.

133. The Controlling Access Settlement contemplated that certain portions of Plaintiffs' Phase II Technology would fall within the claims of Controlling Access Patent and that Microsemi would serve as assignee of that patent.

134. The Controlling Access Settlement also commemorated the fact that Plaintiffs were the sole owners of all Phase-II Technology.

135. As assignee to that Phase-II Technology which fell within the Controlling Access Patent, Microsemi had a duty to protect and maintain all such Phase-II Technology, including, without limitation, maintaining all domestic and foreign patent rights thereto.

136. Microsemi (predecessor) had fulfilled that when in writing it asked Plaintiffs for the patent filing release for South Africa; and in fact threatened litigation if it was not produced for both-parties' use in a timely manner (two calendar weeks). No other releases (for the EU, CA, BR, or JP filings) were requested and as such there is a claim under the Sherman Act based therein here for Antitrust as the Fiduciary operating in a Foreign Nation, and under the Foreign Antitrust Act's very stringent "connection to commerce in the US" these filings, as foreign instances of US6370629 and the related unauthorized filings of US6393126, bring this all together under the Sherman Act under its horizontal customer allocation and territorial allocation agreements, something the Defendants acted in preventing the advancement of each of the foreign filings of US6370629 as well as the foreign unauthorized filings of US6393126 entail.

137. Microsemi has breached its duty to maintain the Phase-II intellectual property by allowing certain foreign patents covering Plaintiffs' Phase-II Technology to lapse.

138. As a result of Microsemi's breach of its duty to maintain the patents covering the Phase-II Technology, Plaintiffs have been damaged in an amount to be determined at trial by the global inclusion of this protected IP into Internet and Networking standards. As a result of this the entire world has become an infringer into this IP and its controls.

COUNT THREE
(Unjust Enrichment - Microsemi)

139. Plaintiffs restate the above as if set out fully herein.

140. In 1999, Plaintiffs and Microsemi entered into the Controlling Access Settlement by which they contracted for Microsemi's license to the portion of Plaintiffs' Phase II Technology which was embodied in the 1998 Patent Application.

141. In 2001 Microsemi submitted the 2001 Application Rewrite to the USPTO, which resulted in the '629 Patent issuing containing claims which read on Phase II Technology never contemplated by the parties to the Controlling Access Settlement and never licensed to Microsemi by Plaintiffs.

142. As a result of Microsemi's unilateral and unlawful expansion of the scope of the Controlling Access Patent, and its status as assignee of that patent, Microsemi has been unjustly enriched in the amount that it has benefitted in any way from the Phase-II Technology not included in the 1998 Patent Application.

COUNT FOUR
(Tortious Interference With Prospective Economic Advantage - Microsemi)

143. Plaintiffs restate the above as if set out fully herein.

144. Plaintiffs are the sole owners of Phase-II Technology with the limited exceptions of Microsemi's license rights as delineated in the Controlling Access Settlement.

145. Microsemi, as the counterparty to the Controlling Access Settlement, had actual knowledge of Plaintiffs' rights to all Phase-II Technology, subject to its limited license rights.

146. After issuance of the '629 Patent, Plaintiffs attempted to license rights to their Phase-II Technology with prospective licensees.

147. On information and belief, Microsemi directly interfered with Plaintiffs' attempts to obtain economic advantage from their Phase II Technology by advising prospective licensees that Plaintiffs had no rights to any of the property embodied in the '629 Patent, including all Phase-II Technology therein.

148. Microsemi likewise repudiated the existence of the Controlling Access Settlement to Plaintiffs and to third parties by, among other things, for thirteen (13) years refusing to produce a fully-executed copy of that agreement (until February of 2013).

149. Microsemi's direct and indirect actions were wrongful and done with the intent to deprive Plaintiffs of their business expectancy with prospective licensees.

150. As a result of Microsemi's tortuous interference with their prospective license arrangements, Plaintiffs have been damaged in an amount to be determined at trial.

COUNT FIVE
(Declaratory Judgment – '629 Patent Contains Phase II Technology Not Within 1998 Patent Application)

151. Plaintiffs restate the above as if set out fully herein.

152. There is an actual controversy as to whether and to what extent the unlicensed 2001 Application Rewrite for the '629 patent filing and the final '629 Patent contain Phase-II Technology which was not contemplated by, or incorporated into, the 1998 Patent Application or the Controlling Access Settlement.

153. This exposure of trade secret and NDA protected information in the US6370629 patent filing constituted first-use inside the Patent Program and prevented Plaintiffs from filing their own patents on the same material.

154. In regard to this claim Plaintiffs request the Court enter a declaratory judgment based upon its construction of the claims of the 2001 Application Rewrite and the '629 Patent and using its comparison of them with those in the 1998 Patent Application to delineate with specificity the components of the claims of the 2001 Application Rewrite and the '629 Patent which read on Phase II Technology and are not contained in the 1998 Patent Application.

155. The purpose of this is to determine whether there is any relevant part of the original patent as a part of '629 or whether it is all content pertaining to the Phase-II IP designs and as such the entire patent is Plaintiff's property based on a allegation of a discovered fraud in the original filing wherein "there isn't any of the IP in the final patent which the Defendants assured Plaintiff's they were contributing to the US6370629 filing", something that would eliminate any of the underlying reasons for the original assignment to Hastings and his company DDI in the beginning of this matter.

156. If it is determined that there is none of the underlying Intellectual Properties from the '992 Patent inside of '629, then the Court is asked to order the immediate 'voiding' of both the Assignment for Management Agreement and the Settlement Agreement therein.

COUNT SIX
(Tortuous Interference With Prospective Economic Advantage - Sherman Act/Antitrust)

157. Plaintiffs restate the above as if set out fully herein.

158. Plaintiffs are the sole owners of Phase-II Technology with the limited exceptions of Microsemi's license rights as delineated in the Controlling Access Settlement.

159. Defendants have a formal responsibility to protect the IP described in the Settlements it controls for all parties. That specifically includes making sure the patents are viable and unauthorized users are not using the IP or authorizing Copyrightable Standards or Code implementing these standardized functions which will infringe on Plaintiffs rights.

160. As such Count Six involves Defendant IETF, the Internet Engineering Task Force and its parent organization the Internet Society (ISOC) for their use of PHASE-II protected IP in many of their standards and now inside of the core drivers which make up the foundation of the World's Internet.

161. Microsemi's through its incarnations over the last decade and their direct and indirect actions in its working with the Defendant IETF are a key part of their tortuous interference.

162. In its interfering with Plaintiffs rights, Microsemi refused to confirm the US 6370629 controlled third-party enforcement rights to Defendant IETF which Plaintiff's enjoyed per the settlement and in doing so (actively participating in the standards process) they defrauded Plaintiff's by placing an IETF controlled copyright onto Plaintiffs Intellectual Property as part of the standards practice by allowing IETF to use Plaintiffs IP in the systems the standards are and were drafted on.

163. As to how these are Sherman Act violations, these actions with the IETF constituted market division or allocation schemes to prevent Plaintiffs from being able to

enforce their rights herein and to enforce a global monopoly against the enforcement of US6370629 in all nations.

164. In addition to its performing this process, the IETF operates its entire existence across a number of computers in a distributed network; In its doing this the IETF has used the infringing IP products themselves inside its very operations in all of its publications; additionally it has included instructions which force a third-party implementing compliance with their design-set to infringe as well meaning anyone implementing the standard as a product would infringe as well as their customers;

165. Historically this was done by IETF with its partner Microsemi and US Government in numerous of its standards despite continuous objection from Glassey over its unauthorized use and the fact the Standards Org as a Consensus based standards organization isn't doing research and cannot claim its doing anything other than IP development for commercial users, and as such has no research exemption.

166. Finally a question arises as to the "the Use of Copyright ss107 exemptions to cover-up patent infringements by 'the party proselytizing the intentional infringement' by forcing its use in their very work product the Internet Protocol 'standards documents'"; and

167. As the second half of this same question, the allegation is that the IETF itself is not a transparent standards process at all and is not comparable or have any real oversight like ANSI or the IEEE and that as such it has become more of the Wild West Show the JEDEC standards committee was found in the US Courts to be in the RAMBUS Matters.

IETF Copyright ss107 Status and MGM v Grokster Standings

168. Additionally as part of Count Six the Court is asked to rule formally on whether the IETF itself is a Research Organization under the Copyright 107 exemption. The purpose of this is to make a determination as to whether the IETF's actions constitute something farther than copyright frauds under *MGM v Grokster*. The Supreme Court ruling in *MGM Studios Inc v Grokster Ltd* set a standard for any party (in this case the IETF a global standards agency operated as a **benevolent fraternal org** under the Tax Exempt Umbrella of the Internet Society Corporate Standing we assert "to cover up its real purpose, to allow Silicon Valley companies and others to manipulate global IP standards in their desire to end all patent support in any technology venue".

169. As such they (the IETF) are identical to GROKSTER as an agency distributing IP controlled products under an external agreement and their actions fully controlled by the Supreme Court ruling therein. (see *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005)⁴).

170. The argument being that the IETF is identical to a P2P sharing service and so is the Grokster-Role party in this matter and as such cannot even if they are a research institution (which is highly doubtful since they maintain the Internet Research Task Force (www.irtf.org), a separate org controlled under a separate set of rules and practices) still qualify as a 107-enabled entity as a University could.

171. As such the IETF publication of our their standards which contain our Patent-protected Technologies constitutes a both a direct infringement in the publication as well as an additional Copyright Infringement on the natural copyright

⁴ 545 U.S. 913 (*more*) see also 125 S. Ct. 2764; 162 L. Ed. 2d 781; 2005 U.S. LEXIS 5212; 75 U.S.P.Q.2D (BNA) 1001; 33 Media L. Rep. 1865; 18 Fla. L. Weekly Fed. S 547

issued when the US Government issued the US patent controlling this material. That second claim is tied to the actual copyright and the IETF's failure to enforce any of its Intellectual Property process ruled contained in BCP79, its IP Standards Document;

172. The principal claim is the IETF in refusing to enforce its own rules and practices and in not being a research institute or academic practice, and finally under its blanket use of the infringing technology in its own infrastructure creates a natural-trifecta of claims which exist under a number of standards from the Sherman Act to theft of Trade Secrets and in the intentional damage to the IP in the abandonment's of the patents filed in the EU, South Africa, Japan, Brazil, and Canada all support this fully, that under Patent and US IP and Trade Secret Law, no extension of the **research exemption under the copyright provision** exists for the IETF, and further Copyright Exemptions cannot authorized the setting aside of US Patent Law under Title 35 so the IETF creating a written work about a technology cannot "in and of itself carry any right to implement, use or do anything else with that Patent Protected IP, only Patent Licensing satisfies that.

COUNT SEVEN

(Declaratory Judgment – Patent Fraud, Unauthorized Filing of US6393126)

173. Plaintiffs restate the above as if set out fully herein.

174. Plaintiffs are the sole owners of Trusted Timing Infrastructure (TTI) System Technology with the limited provisions of the three derivatives licensed to Microsemi against three of the thirty-two components of the TTI itself.

175. Further that these are licensed for US use only in the Settlement Agreement since sections 8.1 and 8.3 restrict any and all disputes with the products or

their use by any and all third parties including end users to the Courts and Laws of the State of California.

176. Microsemi as predecessor Datum filed a patent against "the entire Trusted Timing Infrastructure IP library" listing Erik Van Der Kaay (US6393126) as the inventor with several of his engineers including those directly involved in the alleged "standards agency frauds" outlined previously in COUNT SIX.

177. The Patent (US6393126) was issued in the US and in a number of other countries and contains a number of controls and claims which overlap those which the US6370629 patent was filed to protect, so the foreign instances of 6393126 control many aspects that the Plaintiffs' rights under US6370629 which were filed in those same nations were intended to. As such the promulgation of 6393126 into foreign filings is an alleged fraud done to control key aspects of what the US6370629 is supposed to.

178. Nothing in the Trusted Timing Infrastructure settlement contemplated Microsemi filing a patent listing itself as the creator of the technology, something blatantly false based on the settlement agreement alone. This claim is further fully supported by the Toby Gellman appellate ruling.

179. The amount of the TTI which the patent was issued against like the 2001 changes to '629 included large amounts of Glassey owned IP from the CertifiedTime Inc Bankruptcy (01-54207-MM - San Jose). Additionally aspects and IP controlled by '629 was added to the '3126 patent without authorization to get it issued as well.

180. We therefore seek an order to the USPTO to remove Erik Van Der Kaay's name from this patent as well as the others and to replace them with Plaintiff Glassey exclusively. Likewise there is no assignment of this patent to Microsemi corporation

planned for or authorized in the settlement so we ask the Court to order the Patent Office to reassign this patent with full rights therein to Plaintiffs;

COUNT EIGHT

(Declaratory Judgment –International transfer of TTI Intellectual Properties to set aside the Settlement Agreement, Unauthorized removal of TTI from US Courts' Jurisdiction)

181. Plaintiffs restate the above as if set out fully herein.

182. Plaintiffs are the sole owners of Trusted Timing System Technology with the limited provisions of the three components licensed for US use only in the Settlement Agreement.

183. Settlement Terms are permanent per section 3.15 and 8.4 of the DDI Settlement contract and require continuous reporting on licensing, and further per sections 8.1 that "any and all disputes for any and all users of the IP sublicensed in the settlement do so in the courts and under the laws of the State of California" and that per section 8.3 these terms are binding on all successors in any form (including but not limited to end-users of the product and any intermediary distribution framework set up to support them).

184. Microsemi corp. at some point entered into a Joint Venture with a Cambridge England company called nCipher based on an introduction Plaintiff Glassey had made several years previous.

Microsemi transferred the protected IP of the TTI settlement to nCipher who took it to England and then brought the product back into the US as an English Copyright and Patent based Product under their name. This violated the terms of the settlement agreement.

COUNT NINE**(Declaratory Judgment –Mandatory Acceptance Requirements for transfer of US6370629 to Microsemi)**

185. Plaintiffs restate the above as if set out fully herein.

186. Per section 8.4 each party assuming a control role for the licensing must notify the Plaintiffs of this within the 14 day period agreed to between Microsemi Attorney John Cannon and Plaintiffs as documented in the Cannon South African Patent Instance filing release letter.

187. Plaintiffs request the court issue a declaratory judgment that Microsemi breached this key term and strip Microsemi of the US6370629 patent awarding it in full to Plaintiffs and damages therein as the court sees fit including fraud losses therein.

COUNT TEN**(Declaratory Judgment –Defendant US Government's use of FISA and National Security Letters to cover up other actions and alleged frauds)****Governments Alleged Use of a National Security Letter in this matter**

188. Plaintiffs assert that this matter clearly has National Security implications because this single set of IP rights controls all systems inside the Government as well all commerce in the US today; and based on various refusals from the US DoJ and the giving of a Judges position to Defendant PETER CHEN the specific attorney inside the Lathem Watkins law firm we believe created the delaying tactic and withholding-the-settlement agreement from everyone, the Plaintiffs believe that the President of the United States (POTUS) or some party working for the President issued a National Security Letter (NSL) to the FISA Court and "that a warrant classifying this fraud loss and the actions of both the Government Employees and those of the Industry Players

herein" was issued in this matter to prevent Glassey and McNeil from getting proper legal help in advancing these fraud claims, and as such this becomes a key civil rights matter therein. That said letter may have even been served on California Judiciary including the Judge in California who dismissed the review of the original contracts and alleged frauds therein while continuing to operate the courts infrastructure on infringing technology as well.

189. This claim is substantiated by every attorney hired by Glassey to prosecute this matter "refusing to answer the question 'as to whether they were contacted by anyone in their State Bar, State Government, US Government or in particular the FISA court in this matter'".

190. As such we request the USDC and this Court immediately reach out to the FISA court and request formal verification of this matter and if said order exists issue a further order "vacating any rulings in this matter by any other court".

191. That the USDC also order the termination of that National Security Letter if it does exist;

192. The justification for this is that an Action denying Bill of Rights protections against Court Access and Property Protection violates all of the FISA Court Members Oath of Office as Judges of the US District Court and that an action on the part of the FISA Court itself constituted both interference with a private citizens Seventh ***Amendment access to competent legal services and the courts therein***, and through that ***a manipulation of the that citizens fifth amendment rights codified in the Settlement or Co-inventor Agreements both***.

193. Further this final claim includes Named DOES named as USG (US Government) and its former officers including Leon Panetta as an individual today, the

following US Government agencies: National Security Council and the President of the United State as an individual and in their respective roles in the US Government.

Summary and Additional Prayer for Relief not included in Counts

WHEREFORE, Plaintiffs Michael E. McNeil and Todd S. Glassey request this Court to enter judgment in their favor on all counts, especially count ten (10), and to award the Plaintiffs damages as requested in specific Counts and cumulative damages in an amount to be determined at trial against "the use of the unauthorized and patent-protected IP rights by IETF and all of its third-party Users as was done with MGM Studios v Grokster herein including in all computing and network infrastructure components (including but not limited to switches, routers, servers, and client platforms including cellular and mobile computing (aka wireless/cellular) systems)" in use globally through the entire effective period of all patents cumulatively including those abandoned today.

Additionally as part of this to

1. award Plaintiffs specific declaratory relief to the effect that the 2001 Application Rewrite and the '629 Patent contain Phase-II Technology which was not identified in the 1998 Patent Application,
2. award them relief in regard to their US3693126 damage claims, and
3. award the Plaintiffs damages against the US Government (POTUS, NSA, National Security Council, DoJ, et Al.) for their alleged use of a NSL and FISA warrant issued to GLASSEY Counsel's (from Hopkins Carley and Berliner Cohen to Mahaney/Ertl) for the effect of this 'classifying the fraud complaint under the FISA and National Security Act (as well as other

legislation) ***to reduce or eliminate the effectiveness of Plaintiff's Counsel in the matter herein;***

4. award Plaintiffs

- a. against the IETF and its parent the Internet Society uses in operating the computers they publish virtually everything on and through, as well as the key companies profiting from this as a class including but not limited to Cisco, Google, Apple, Ebay, Paypal, Oracle Microsoft, and
- b. additionally under current US Public Policy to issue formal Court Order to the IETF and Internet Society "that all of their standards must come into immediate conformance with US DMCA provisions and best practices of a Global Standards Org with regard to its IP Management Practices" - meaning there must be a DMCA compliant use and take down policy implemented in all existing IETF standards; and
- c. finally that this court order that the IETF Copyright of all preceding documents is void by this alleged fraud and that by order of the court "no matter what contractual agreement exists between the authors and the IETF as to that IP's licensing", and to award Plaintiffs any award to plaintiffs direct losses, treble damages as authorized by the numerous fraud statutes this suit alleges were violated and any other relief to which the Plaintiffs are entitled, including but not limited to legal fees herein.

d. Based also on the Equal Protection Clause of the Fourteenth Amendment and other aspects of the Fifth and Fourteenth Amendments the denial of both the US Government and the State of California has placed both entities in a position where they have not only violated the Fifth Amendment by allowing the conversion of the disputed properties, but in doing so they also under the fourth Amendment functionally seized property⁵ by claiming this Intellectual Property Right against US and Foreign Patents did not exist, in doing so they have blocked access to the courts therein under the Seventh and Fourteenth Amendments to the US Constitution.

⁵ Boyd v. United States, 116 U.S. 616 (1886)

Respectfully submitted,


Todd S. Glassey, In Pro Se

tglassey@earthlink.net

305 McGaffigan Mill Road
Boulder Creek CA 95006
Telephone: (408) 890-7321


Michael E. McNeil, In Pro Se

8/20/2014

Michael E. McNeil, In Pro Se
PO Box 640
Felton CA 95018-0640

Jury Demand

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all issues so triable.


Plaintiffs

Aug 20 2014


Plaintiffs

8/20/2014

EXHIBIT C

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

TODD S. GLASSEY and MICHAEL E. MCNEIL,

Plaintiffs,

No. C 14-03629 WHA

v.

MICROSEMI INC, THE IETF AND ISOC, AND
THE US GOVERNMENT AND INDUSTRY
PARTNERS (INCLUDING BUT NOT LIMITED TO
APPLE, CISCO, EBAY/PAYPAL, GOOGLE,
JUNIPER NETWORKS, MICROSOFT, NETFLIX,
AND ORACLE), USPTO ALJ PETER CHEN ESQ.,
AND TWO INDIVIDUALS (MARK HASTINGS
AND ERIK VAN DER KAAY) AS “NAMED
DOES,”

**ORDER STRIKING COMPLAINT
AND VACATING HEARINGS**

Defendants.

INTRODUCTION

Two *pro se* plaintiffs allege that “the entire world has become an infringer” based on a technology that allegedly controls “most all online commerce globally.” They have sued a litany of individuals and entities, including numerous technology companies, federal agencies, the Governor of California, and the President of the United States. Six defendants have filed motions to dismiss. No defendants have filed an answer. For the reasons stated herein, the first amended complaint is hereby **STRICKEN**.

STATEMENT

Pro se plaintiffs are Todd S. Glassey and Michael E. McNeil.* The first amended complaint alleges as follows.

In October 1998, plaintiffs say they entered into an agreement in which Digital Delivery, Inc. (“DDI”) allegedly agreed to submit a “Controlling Access” patent application. DDI then became a wholly-owned subsidiary of Datum, Inc., which then commenced a lawsuit against plaintiffs (and Glassey-McNeil Technologies), which settled. In pertinent part, as part of that settlement in 1999, plaintiffs say they agreed to assign all rights to the “Controlling Access” patent and “Phase II Technology” to Datum. U.S. Patent Nos. 6,370,629 and 6,393,126 issued in 2002. Datum was identified as the assignee on the face of both patents.

In October 2013, Mr. Glassey and Mr. McNeil (via counsel) commenced an action against Symmetricom, Inc., which allegedly acquired the “assets and liabilities of Datum” in 2002. *Glassey, et al. v. Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (Judge Nat Cousins) (Dkt. Nos. 1, 40, 45). The action was voluntarily dismissed without prejudice, after an order to show cause regarding subject-matter jurisdiction issued.

In August 2014, Mr. Glassey and Mr. McNeil — now proceeding *pro se* — commenced this action. The first amended complaint is fifty pages. In essence, to the extent comprehensible, it alleges that Datum interfered with plaintiffs’ efforts to license the “Phase II Technology, as embodied in the ’629 Patent” (Amd. Compl. ¶ 122). The agreements from the late 1990s were allegedly “breached” by defendant Microsemi Inc. The “Phase II Technology” was and is allegedly “inside the machines” adopted by the “Internet Engineering Task Force” (“IETF”), a “global standards organization.” “The functional result is that everyone using the Local Area Networking Protocols outside the Internet is also an infringer” (Amd. Compl. ¶¶ 37–39).

* Mr. Glassey has commenced several actions in our district. *See, e.g., Glassey v. Amano Corp., et al.*, No. 04-05142 (N.D. Cal. Bankr.) (Judge Marilyn Morgan); *Glassey v. National Institute of Standards & Technologies, et al.*, No. 5:04-cv-02522-JW (N.D. Cal.) (Judge James Ware); *Glassey v. Amano Corporation, et al.*, No. 5:05-cv-01604-RMW (N.D. Cal.) (Judge Ronald Whyte); *Glassey v. D-Link Corporation*, No. 4:06-cv-06128-PJH (N.D. Cal.) (Judge Phyllis Hamilton); *Glassey, et al. v. Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (Judge Nathanael Cousins).

1 The “World’s Internet Standards [have] created three billion daily infringers” and the “net-effect
2 is this single Patent now controls (or there are claims for) most all online commerce globally.”
3 The antitrust laws allegedly have been violated to prevent plaintiffs from exploiting their “global
4 monopoly.” Numerous federal agencies, including the Department of Commerce, Department of
5 Energy, Department of Transportation, Department of the Treasury, Department of Defense, and
6 so forth, allegedly use “infringing technologies.” Cisco Systems, Inc., Google Inc., Microsoft
7 Corp., Oracle Corp., eBay, Inc., PayPal, Inc., Microsemi Inc., and others are also referenced in
8 the pleading (Amd. Compl. ¶¶ 17, 18, 163).

9 The pleading further alleges that this dispute implicates “national security.” It speculates
10 that the President of the United States issued a “National Security Letter” to cover up a “fraud”
11 and that this letter “may have been” served on the “California Judiciary” (Amd. Compl. ¶¶
12 188–91). This action was reassigned to the undersigned judge in September 2014.

13 Plaintiff Mr. Glassey then filed a motion for a “three-judge panel,” which was denied. He
14 also larded the record with voluminous “exhibits” (Dkt. Nos. 17–31, 53–57).

15 Now, Cisco Systems, Inc., the Internet Society (and the Internet Engineering Task Force),
16 eBay Inc., PayPal, Inc., and Google Inc. move to dismiss the first amended complaint. Mr.
17 Glassey opposes (Dkt. Nos. 79, 80, 81, 82, 83, 84, 94, 95). Although he failed to obtain prior
18 permission to file a sur-reply, it has been reviewed. Other defendants that have appeared have
19 filed stipulations to extend the time to respond to the operative pleading. For example, the
20 deadline for the United States to respond is currently December 11. *No defendant has filed an*
21 *answer*. The parties (that have appeared) have also filed a stipulation to continue the November
22 20 case management conference.

23 ANALYSIS

24 The first amended complaint suffers from so many deficiencies that it would be hopeless
25 to proceed. This order will only address a few of the fundamental difficulties.

1 First, the pleading fails to state a claim for relief against the vast majority of the
2 “defendants.” For example, Cisco, eBay, PayPal, and Google are mentioned only twice in the
3 pleading. There is only a brief reference to whether they are members of a standards organization
4 (and whether they are Delaware corporations) and a reference to plaintiffs’ prayer for an “award”
5 from “Cisco, Google, Apple, eBay, PayPal, Oracle [and] Microsoft.” This is wholly insufficient.

6 Second, the pleading fails to contains sufficient factual matter, accepted as true, to state a
7 claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
8 There must be more than mere “labels and conclusions.” *Bell Atlantic Corp. v. Twombly*, 550
9 U.S. 544, 555, 558 (2007). Plaintiffs’ pleading is so bare that most of the allegations necessary to
10 state the litany of claims referenced in passing are missing. In a conclusory fashion, the pleading
11 references “Sherman Act violations,” “constitutional violations” under the Fourth, Fifth, Seventh,
12 and Fourteen Amendments, infringement under patent and copyright law, misappropriation of
13 trade secrets, breach of contract, unjust enrichment, intentional inference with prospective
14 economic advantage, conversion, fraud, and declaratory relief. No claims are properly alleged.

15 Third, many of the claims are time barred. Plaintiffs’ dispute centers upon agreements
16 allegedly entered in the late 1990s and alleged torts from 2001 and 2004. The limitations period
17 passed long ago.

18 Fourth, plaintiffs appear to lack standing to assert at least some of the claims. Defendant
19 Microsemi Inc. appears to be the assignee of at least one of the patents referenced in the pleading
20 and no ownership of a valid copyrighted work is alleged.

21 This order highlights some of the fundamental difficulties with plaintiffs’ first amended
22 complaint but there are many more.

23 CONCLUSION

24 Accordingly, for the reasons stated herein, the first amended complaint is hereby
25 **STRICKEN IN ITS ENTIRETY**. There is no operative pleading in this action. Accordingly, the
26 November 20 hearing and case management conference, December 4 hearing, and December 11
27 hearing are hereby **VACATED**. Plaintiffs have until **NOVEMBER 13, 2014 AT NOON** to file a
28 proper second amended complaint. It must cure the deficiencies identified herein. Failure to do

1 so may well result in dismissal with prejudice. Plaintiffs must plead their best and most plausible
2 case and further opportunities to plead will not likely be allowed. This order resolves docket
3 numbers 63, 73, 90, 104, and 107.

4
5 **IT IS SO ORDERED.**

6 Dated: October 30, 2014.


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8 WILLIAM ALSUP
9 UNITED STATES DISTRICT JUDGE
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EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

And

MICHAEL E. MCNEIL, In Pro Se
PO Box 640
Felton CA 95018-0640

PLAINTIFFS,

vs.

Microsemi Inc; US Government -
POTUS, the State of California,
Governor Brown, The IETF and
the Internet Society, Apple Inc,
Cisco Inc, eBay Inc. Paypal Inc,
Google Inc, Juniper Networks,
Microsoft Corp, NetFlix Inc,
Oracle Inc, Mark Hastings, Erik
Van Der Kaay, and Thales Group
as UNSERVED DOES

Defendants.

CASE NO. 3:14-CV-03629-
WHA

JUDGE William H Alsup,
Courtroom 8, 15th Floor USDC
San Francisco

SECOND AMENDED
COMPLAINT FOR
INJUNCTIVE AND
DECLARATIVE RELIEF

**Jury Demand Endorsed
Hereon**

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Second Amended Complaint

1. For this, the Second Amended Complaint, which is intended to cure deficiencies in the PLAINTIFFS' First Amended Complaint ("FAC"), PRO SE PLAINTIFFS Todd S. Glassey and Michael E. McNeil allege this cause of action is specific to a chain of discrete direct patent infringements under 35 USC 271 (a), and include Inducement to Infringe under 35 USC 271 (b) and a Contributory Infringement under 35 USC 271 (c).
2. It also opens the Conspiracy inside the Global Standards Agency IETF, a partner of MICROSEMI, to take PLAINTIFFS' Unique PHASE-II Technologies and include them without authorization into a number of massively used network systems sold by the Defendants herein. And finally highlights and asks for relief from the alleged host of frauds committed by MICROSEMI and its Agents as alleged herein.
3. These patent infringements also uniquely outline a novel set of enforcement claims which pertain to a new PERFORMANCE RIGHT claim under the US Copyright Act to derivatives of the Infringing Standards; As published by IETF which pertain to products that the Defendants are shipping today.
4. It further recognizes PLAINTIFFS' existing THIRD-PARTY ENFORCEMENT RIGHTS against what is called the PHASE-II TECHNOLOGIES which are the bulk of the claims (if not all in fact) of those documented in US6370629.
5. PLAINTIFFS allege they have been defrauded as such from all of their enforcement rights globally against an Intellectual Property based on Defendant MICROSEMI'S actions and based on the unrestricted adoption by Defendant IETF, today PLAINTIFFS' PHASE-II IP is a part of virtually all networking systems in use globally.

6. Finally, PLAINTIFFS are entitled to under IRC165 a fraud loss equal to "the difference between royalties-received (none) minus the value of the opportunity-lost [which PLAINTIFFS would have been able to receive if they filed US6370629 on their own] relative to what they actually recovered through the extorted DDI and TTI settlements and the alleged frauds by MICROSEMI and its partners since". This formula creates an IRC165 Fraud Loss = to amount lost in opportunity minus the amount made.
7. As such PLAINTIFFS are entitled to under the IRC165 Fraud Loss Statutes a full financial loss against all enforcement revenues which would have been derived from all six of the US6370629 patent filings noted herein to date, and because of this PLAINTIFFS seek formal acknowledgement of that FRAUD LOSS with the US Department of the Treasury, Internet Revenue Service ("IRS") from this the Trial Court as just one of the relief's asked for herein.

The content of this, the Second Amended Complaint (PageCount)

8. The Second Amended Complaint wound up being significantly more pages to properly charge the COUNTS and Background Information out. PLAINTIFFS apologize to the Court for that.
9. Per the Order of the Court, this Second Amended Complaint ("SAC") is being filed to directly clarify and properly charge each infringement under the methods of charging required for 35 USC 271 (b) and (c) claims beyond the use of FORM-18. It increased the page count to properly re-charge each defendant and we apologize to the Court for that. Further Defendant PETER CHEN was omitted in the interest of Justice. All other parties and claims are maintained.
10. The complaint fully illustrates the CONTINUING OFFENSE nature of Defendant MICROSEMI'S actions and further clarifies the "AGENTS OF MICROSEMI" as "DOES"

under Federal BIVENS standard and brings their actions herein fully into the 'cleansing effect Sunlight adds to all proceedings' this litigation is opening up per Justice Brandeis.

Memorandum of Points and Authorities already inside the SAC

11. The SAC also has certain Case References worked into the Complaint itself because of the number of claims and defendants involved so a separate Memorandum of Points and Authorities is probably not necessary for this as the Compliant. Any other case references necessary will be submitted in P & A which will be filed in response to Defendants responses to this SAC.

PRO-SE Style - Our Open Apology to the Court

12. PLAINTIFFS apologize again to the Courts (as Pro Se litigants) in our bumbling style, and we hope to make up for that by stating the intent of the Second Amended Complaint is to clarify the Claims in the First Amended Complaint ("FAC") .
13. Plaintiffs submit this SAC document to further perfect the descriptions and charging for the extended 35 USC 271 claims under sections (b) and (c); and to properly notice the fraud (for FRCP 9(b) compliance in the complaints in regard to the unauthorized patent filings the statutory records prove happened; and then the acknowledgement of Microsemi's fraud and TI claims in its abandonment of five US6370629 patents in foreign jurisdictions;
14. Finally the SAC hopes to perfect the Antitrust Claims under the Sherman and Clayton Acts as alleged in the FAC.
15. In perfecting these claims the SAC adds detail to the existing charges in the FAC and properly identifies Sherman Act Complaints pertaining to Section One from Section Two actions therein.
16. It also properly charges the Clayton Act violation in the Merger requirements for Defendant MICROSEMI still outstanding to date.

17. It further raises the question of new claims being anticipated through Discovery as well as the adding of a SOX406 Claim as well.

Exhibits for this Second Amended Complaint

18. In the interest of keeping this filing down, the exhibits for this the second amended complaint are referenced from DOCKET#6 as that set of Exhibits. We reference them as such for this filing;

Definitions

Plaintiffs

19. **PLAINTIFFS** are individuals who were, for all times relevant hereto, residents of Santa Cruz County, California.

Defendants

MICROSEMI (and its operating divisions, resellers and partners)

20. **Defendant MICROSEMI, Inc.** ("**MICROSEMI**"), is, on information and belief, a Delaware corporation with its principal place of business in ALISO VIEJO California. This matter then pertains to MICROSEMI and its agents and resellers as well (as BIVENS-qualified DOES). That MICROSEMI increased the scope of SYMMETRICOM and DATUM Resellers and kept the AMANO RESELLER relationship in place with its agent AMANO CORP.

MICROSEMI Defendant Symmetricom, Inc.

21. **Defendant Symmetricom, Inc. ("Symmetricom")**, was, on information and belief, a Delaware corporation with its principal place of business in Irvine California. Defendant Symmetricom did, on information and belief, acquire the assets and liabilities of Datum, Inc. ("**Datum**"), in 2002 through a Merger creating a new Symmetricom as the successor to Datum. That Symmetricom increased the scope of DATUM Resellers and kept the AMANO RESELLER relationship in place with its agent AMANO CORP.

MICROSEMI Resellers AMANO and CISCO

22. Defendant DATUM entered into reseller agreements with DEFENDANT CISCO and its **(DOE) JAPANESE RESELLER AMANO INC.**
23. **The Amano Corporation ("AMANO")** is located in Japan at 275 Mamedo Cho, In Yokahama Japan. AMANO CORP was also the operator of the PLAINTIFFS' Data Center site (from corporation CertifiedTime Inc) in Japan and seized and converted PLAINTIFFS' property PLAINTIFFS assert on the order of Microsemi;

MICROSEMI Defendant Digital Delivery Inc

24. **Defendant Digital Delivery Inc ("DDI")** was a Massachusetts based corporation which PLAINTIFFS retained for Patent Agency legal representation;
25. Defendant Datum did, on information and belief, acquire the assets and liabilities of Digital Delivery, Inc. (DDI) in or about July 1999.

MICROSEMI Defendant BANCOM Division

26. **Defendant Mark Hastings** ("**Hastings**") is by information and belief the President and Founder of DDI and later was made the President of the BanCom (Bandwidth Compression) division of Datum Inc when it acquired DDI.
27. Mr. Hastings and his Corporation "DDI" became PLAINTIFFS' FIDUCIARY under the CO-INVENTOR AGREEMENT for the filing of the US6370629 Patent Application(s).

MICROSEMI Digital Delivery Inc - President Mark Hastings

28. **Defendant Mark Hastings** ("**Hastings**") was by information and belief the President and Founder of DDI and later was made the President of the BanCom (Bandwidth Compression) division of Datum Inc when it acquired DDI; Mr. Hastings and his Corporation "DDI" became PLAINTIFFS' FIDUCIARY under the CO-INVENTOR AGREEMENT for the filing of the US6370629 Patent Application(s).

MICROSEMI Defendant CEO ERIK VAN DER KAAJ

29. **Defendant Eric Van Der Kaay** ("**EVDK**") is by information and belief the President and CEO of Datum and later terminated by the Board of Symmetricom after getting into a FIST FIGHT with Defendant HASTINGS over PLAINTIFFS' IP and the alleged actions the two perpetrated in the cause of action herein. PLAINTIFFS allege Mr. Van Der Kaay unlawfully filed for Patent protection listing himself as the primacy inventor of PLAINTIFF GLASSEY'S TRUSTED TIMING INFRASTRUCTRE (US6393126) WITHOUT AUTHORIZATION OR COMPENSATION to PLAINTIFFS.

MICROSEMI Partner - The Thales Group

30. Additionally there is one BIVENS DOE to name as a corporation; That being The **DOE** called **"The Thales Group" ("Thales")** (a Delaware Corporation in the US). Thales is the landed US Base of the larger Defense Systems contactor "The Thales Group" of Cedex France, and its **eSecurity Division**, A Delaware Corporation called **"E-Security, Inc"** (nee "nCipher Inc" of Cambridge England).
31. The eSecurity Division of the Thales Group US operations is located in the State of Florida; and claims against Thales Group and in particular to the eSecurity Division pertain to its use of TTI Settlement IP and breach of the TTI Settlement through its partner MICROSEMI exist under the Antitrust umbrella as well. It is this division which sells the specific piece of PLAINTIFFS' IP used by the NSA and GCHQ as well as others in timestamping their Internet Surveillance Data which is a component of their National Surveillance Plan and its operations. Discovery will allow PLAINTIFFS to name exact parties within the corporate veil.

Defendant "United States Government"

32. **Defendant "United States Government"** ("**USG**") from Legislative to Administrative branches, is named because of its dependence on Computers running "Infringing Networking Drivers and Applications" ("**INDA**") and for its refusal to prosecute the parties committing these frauds while also simultaneously purchasing infringing equipment while also interfering with PLAINTIFFS' Attorneys and their service to PLAINTIFFS.

Defendant State of California - Governor Brown"

33. **Defendant Mr. Edmund G Brown, the Governor of the State of California and the State itself; ("SOC")** California has specific responsibilities in its implementation of US Law and Treaties. Further it has a requirement to not being an active party or financial beneficiary of a criminal action which in collecting taxes against the sale of infringing equipment, the State of California and the Local Counties have become.

Defendant Internet Engineering Task Force ("IETF")

34. **Defendant Internet Engineering Task Force ("IETF")** is on information and belief, a subdivision of the **"The Internet Society" ("ISOC")** . The IETF is operated as the world's Global Standards Organization for the Internet and it is the IETF who has produced the majority of the network standards applications which infringe on the rights here were written from.
35. **Defendant The Internet Society ("ISOC")** - www.isoc.org) is by information and belief a District of Columbia registered corporation operating in full compliance with US Corporation Law and Process as codified for the District of Columbia based corporate entities.

Industry (IETF Member) Defendants and MICROSEMI Partners

36. The following Defendants are named members of the IETF (and its related standards agency partners OASIS and IEEE et Al) who all either both use IETF standard-compliant networking underneath the processes of operating the Standards Practice, and/or operate within the IETF itself a formal presence and/or who both use these controlled Intellectual

Properties controlled under the "TTI and DDI Settlement Documents" inside their products and corporate operations; They include but are not limited to the following

Defendant Apple Inc

37. **Defendant Apple Inc ("APPLE")**, is a Delaware Corporation [Delaware Corporation File Number 3868031] and includes all of its external and foreign corporations or assets; Apple is located at One Infinite Loop in Cupertino California 95014.

Defendant Cisco Inc

38. **Defendant Cisco Inc ("CISCO")** A Delaware Corporation including all of its external and foreign corporations or assets with its principal place of Business located on 170 W Tasman Dr, San Jose, CA 95134. Delaware corporation File Number 0720708

Defendants eBay Inc & Paypal Inc and Defendant Netflix Inc

39. **Defendant eBay Inc & Paypal Inc and Netflix Inc**, ("EBAY" and "PAYPAL") and ("NETFLIX") each a California based Delaware Corporation including all of its external and foreign corporations or assets; Ebay Inc is identified as the entity associated with Delaware Corporation File number 2871352 and operates from its 2065 Hamilton Ave, San Jose, CA 95125 HQ.
40. Paypal Inc is Delaware Corporation File number 3014267 operating from 2211 N 1st St, San Jose, CA 95131.
41. Netflix Inc is registered as well in Delaware its Corporation number is 2790864 and operates from 100 Winchester Circle, Los Gatos, California 95032.

42. All three are Silicon Valley based entities with their corporate headquarters in the San Francisco Bay Area.

EBAY/PAYPAL Sales and acceptance of Negotiating BITCOIN as an infringement

43. In addition to its other infringements eBay sells **BitCoin - ("BitCoin" or "BC") An infringing Cyber Currency**; anyone (Paypal and Ebay) using as a direct "transactor of BitCoins themselves" the Paypal or Ebay commerce systems which infringe in their trading practice and/or who operates a "Bitcoin Mining Operation" will infringe. Mining is a practice which uses an array of crypto-graphic time and location stamps to create value and process inside the BitCoin cyber-crypto-currencies formula's is an infringer on Claims 19-32 of the US6370629 patent; The sales process uses a similar timestamp to control the various aspects of the sales and delivery process through their (Paypal and EBay's) logistics frameworks.

Defendant Google

44. **Defendant Google Inc.**, ("GOOGLE") Delaware Corporation File #3582691 is a Delaware Corporation () including all of its external and foreign corporations or assets; and all of its sub-division and free-standing corporations operated outside of the Google brand; Located in Mountain View California;

45. PLAINTIFFS assert "Google as a corporation would cease to exist if it cannot continue to infringe PLAINTIFFS' IP Rights and cannot get proper licensing from PLAINTIFFS". This is true because so many of Google systems internally infringe on PLAINTIFFS' enforcement rights.

46. As such Google and many others look at PLAINTIFFS' IP as a life-and-death scenario. They must stop PLAINTIFFS from enforcing against them however possible. This is because

Google's search engine and advertising systems are all tied to secured-timestamps as PLAINTIFFS designed the IP for use in. So they directly infringe on PLAINTIFFS' IP Enforcement Rights as does the Geotagging of photographic or media content in youtube and other parts of the Google system as just two of the many infringements therein.

Defendant Juniper Networks Inc

47. **Defendant Juniper Networks Inc ("JUNIPER")** Delaware Corporation #2794873 is a ; A Delaware Corporation operating at 1194 Mathilda Ave, Sunnyvale Ca 94089 including all of its external and foreign corporations or assets; Juniper builds Switches, Routers and other Network Infrastructure equipment. A number of those (most all of them) are operated relying on IETF protocols which contain PLAINTIFFS' Protected Intellectual Properties. Juniper has no non-infringing uses of PLAINTIFFS' properties. All Juniper systems with PLAINTIFFS' IP inside them use that IP for those systems' daily operations. Without PLAINTIFFS' IP those Juniper Systems cease to function.

Defendant Microsoft Corporation

48. **Defendant Microsoft Corporation ("MICROSOFT")** a Delaware Corporation and all of its free-standing business units and external corporate assets; Located at One *Microsoft Way Redmond*, WA 98052-7329. Microsoft has a number of direct infringements and inducement to infringe standings here.
49. The part of the Microsoft Windows Environment which controls daily certification for proper licensing (and all of the related tools in the Deployment Toolkits and Location Based Service Libraries in Windows, Windows Mobile and Windows Embedded infringes as does the Microsoft Active Directory and WINS replacement for DNS as a time-controlled service.

50. As such there is no way to use any Microsoft Operating Software, the Microsoft Patch Cluster updater and Service Package control practice. This includes the OS's as well as key applications like Microsoft Office and many others.

Defendant Oracle Corp

51. **Defendant Oracle Corp**, A Delaware Corporation (FILE NUMBER 2457805) including all of its external and foreign corporations or assets; Located at 500 Oracle Parkway Redwood Shores, CA 94065.

52. Like Google and Microsoft, Oracle as a corporation has so many infringing products or systems that plaintiffs assert Oracle would cease to exist if it cannot continue to infringe PLAINTIFFS' IP Rights and cannot get proper licensing from PLAINTIFFS. There are three key identified infringements from the Oracle back-end Data Base which prevent its functionality at all and PLAINTIFFS believe there are others which Discovery will reveal in how the replication and timestamping triggers work in causing data to be mirrored from one location over secure channel to another.

53. In addition to the already discovered infringements from the Oracle Database Server and Concurrent Manager components themselves, Oracle Front-End Systems (Oracle Financials, Oracle Manufacturing, Oracle HR, Oracle Risk Management, etc) also come with libraries of infringing routines for assembly in the field into infringing applications that every time they are executed directly infringe PLAINTIFFS' rights therein. Meaning in addition to the infringement in the operations of an Oracle Database creating an Oracle Applications Environment as that Database's Front-End will also come with additional infringements.

BACKGROUND

54. PLAINTIFFS own a very unique intellectual property called PHASE-II Technologies.

PHASE-II technologies provide "the ability to access [to open and or close] the content of some blob of data based on TIME AND LOCATION.

55. PLAINTIFFS contracted with Defendant MICROSEMI (DATUM/DDI) for services as a PATENT AGENT but MICROSEMI turned hostile and 14 days later after DATUM acquired DDI MICROSEMI (DATUM) in August of 1999 filed a sham lawsuit to cover up the unlawful transfer of the US6370629 to DATUM in violation of the CO-INVENTOR AGREEMENT.

56. A simple review of the contracts and Datum's direct testimony to the US Government documents in EDGAR showing that this fraud occurred as charged is all that is necessary there. Exhibits proving this fraud occurred are already in the possession of the Court with DOCKET #6 Exhibits. See CONTRACTS/Co-Inventor Agreement from DOCKET #6 and the associated EDGER and PRNEWswire reports there documenting the transfer of DDI as a newly acquired unit of DATUM Inc.

57. PLAINTIFFS allege Datum used this unlawful transfer to get the Patent under Datum who had enough money to run a sham suit against PLAINTIFFS whereas DDI did not. Based on this and with financial manipulations of PLAINTIFFS' accounts owed to them by DATUM the new DATUM/DDI entity extorted the pair of settlements from PLAINTIFFS which it then proceeded to commit additional frauds on.

58. In delivering the executed settlements it altered the signature page on the DDI Settlement the night of its delivery replacing the physical page with the signature page from the other settlement being executed at that time "the TTI Settlement". PLAINTIFFS discovered this

since MARK HASTINGS signature was not on or required by the TTI settlement and is mandatory for the DDI patent action settlement.

59. Datum then started what became the 12 year effort to withhold the DDI Settlement document as a vexation against PLAINTIFFS' efforts to enforce their IP rights as represented to them by the settlements and MICROSEMI Attorneys. It also transferred TTI technologies to a European Company in a manner not permitted by the settlement and they tried to bring the IP back into the US through a JV with a English Company called nCipher. nCipher built out the software portion of the PLAINTIFFS' TTI and then sold the JV to THALES for 50m EU again in violation of the TTI Settlement transfer terms. Both actions constitute Sherman Act Section Two violations.

Scope of the Damages

60. Approximately 13 years of unlicensed use of this IP by any number of infringers and all of the Defendants has created a significant loss to address.

61. In the timeframe of 1999 until today the control of this IP was withheld from PLAINTIFFS by MICROSEMI to allow their partner the Global Standards Organization the IETF to put it into "so many places" PLAINTIFFS would be further vexated from its enforcement.

62. PLAINTIFFS allege that in concert with MICROSEMI who refused to confirm PLAINTIFFS' rights to the IETF that the IETF took this key control IP after becoming enamored with the PLAINTIFFS' PHASE-II Technologies and promptly began publishing their cookbook style Network Standards documents with PLAINTIFFS' PHASE-II controlled processes and methods.

63. Today that means any programs written to implement those communication models infringe as are those created or sold by Cisco, Juniper and all of the named defendants. PLAINTIFFS

further assert that there are no non-infringing uses as such. Further that IETF published this as a free-for-all and then re-licensed Third Parties to use PLAINTIFFS' IP in the Standards Agencies' 'derivative works' under the IETF Standards Agency copyright.

64. This simple set of controls now are inside of virtually all mobile devices and all computing platforms in use everywhere today based on failures to perform under the Settlement by MICROSEMI. That means this IP today facilitates all commerce committed on computers in the US and likely globally.

PLAINTIFFS' Contracting for Patent Filing Services

65. Historically PLAINTIFFS contracted with a company called Digital Delivery Inc ("DDI") as a PATENT AGENT. They were to file on PLAINTIFFS' behalf the US Patent granted as #US6370629.

66. The Filing was completed in 1998 and about six months later MICROSEMI made an offer to buy DDI. In July of 1999, six months before the extorted settlement was signed MICROSEMI acquired DDI in violation of the Co-Inventor Agreement's NON TRANSFERABILITY CLAUSE (see Section E, Docket #6 - exhibits/contracts/co-inventor agreement).

67. PLAINTIFFS assert MICROSEMI and DDI conspired to violate the Co-Inventor Agreement and then sue PLAINTIFFS to extort a settlement more conducive to their actions today, the total theft of PLAINTIFFS' intellectual properties. In doing so Mark Hastings sold DDI to MICROSEMI illegally in violation of his Patent Agency contract with PLAINTIFFS. MICROSEMI immediately (14 days later) sued PLAINTIFFS with a sham litigation and used economic manipulation by withholding five-figure debt owed to PLAINTIFFS to drive PLAINTIFFS' Company into 'submission or bankruptcy'.

68. PLAINTIFFS allege MICROSEMI did this because Defendant MICROSEMI realized the value of this patent and with another group of Intellectual Property ("IP") it licensed from PLAINTIFFS called the TTI, as well as the scope of its potential expenses in being "the keeper of the Patent that PLAINTIFFS contracted with Digital Deliver Inc ("DDI") to file for them"; The logic there is that MICROSEMI would have to file and protect the patent and its enforcement rights (including the foreign filings of US6370629 too) from infringements as well as fund all of PLAINTIFFS' litigations for enforcement including the costs of this action as well.

MICROSEMI extorts and then withholds Settlement Agreement for 12 years

69. MICROSEMI withheld the executed copies of the '629 Settlement until MICROSEMI Attorney John Burton apparently forced his client to stop denying the document existed some 13 calendar years after the document was executed and withheld from PLAINTIFFS. Mr. Burton was replaced instantly for that single action we believe.

70. MICROSEMI as such has waged a war against PLAINTIFFS accessing their IP by filing instances of it without authorization in Japan, Brazil, Canada, and the EU and then abandoning them to create a no-man's-land around PLAINTIFFS' IP causing PLAINTIFFS permanent and irreparable damages therein.

MICROSEMI and its Agents - Amano and Cisco

71. PLAINTIFFS further allege that MICROSEMI employed the use of its AGENT in the Nation of Japan AMANO Corp to first seize and then 'make disappear' the assets of CertifiedTime Inc, a company Amano contractually operated the data centers for in the Shinjuku area of

Tokyo, Japan, which was based on PLAINTIFFS' designs for a "Portable US-Government certified time-service". A design for a product-system which was to be sold to other Governments, a 'shrink-wrapped' system designed by PLAINTIFF GLASSEY in his efforts to 'commoditize' the US Time base as a new type of 'revenue bearing commodity' in the US.

72. These are also Materials which the US Bankruptcy Court also sold to PLAINTIFFS in USBK 01-54207-MM and which constituted one of the actions which marked this ongoing conspiracy and its beginnings on Foreign Soil in the Nation of Japan, marking the criminality of the allegations here, international IP theft constitutes EEA and 18 USC violations.

ONGOING OFFENSE DOCTRINE

73. PLAINTIFFS in addition to the previous allegations identify the actions of the Defendants properly as an ongoing offense; i.e. a protracted event which spans from 1999 until the current time and will continue if not stopped through the terminus of the enforcement period for US6370629, another four years.

74. That the Continuing Offense itself was committed through a chain of discrete acts under the Continuing Offense¹ Doctrine which makes this filing fully timely.

75. MICROSEMI in 1999 paid PLAINTIFF GLASSEY'S company COASTEK \$360K as a "Stand Still Payment" so they could review Glassey's technologies and his Certified Timing Authority ("CTA"), a set of programs their Agent AMANO corporation stole from PLAINTIFFS and allegedly later turned over to MICROSEMI. They did the same thing with

¹ As Judge O'Scannlain has summarized, the continuing offense generally "involves (1)an ongoing course of conduct that causes (2)a harm that lasts as long as that course of conduct persists." Courts have used the term "harm" in the continuing offense doctrine context to describe "the substantive evil [to society that] Congress sought to prevent" in making certain actions or omissions federal crimes. Toussie, 397 U.S. at 122 ("It is in the nature of a conspiracy that each day's acts bring a renewed threat of the substantive evil Congress sought to prevent.")

Glassey company CERTIFIED TIME INC, and then after reviewing the company's Intellectual Properties and business plans under NDA refused to acquire the company while within months key components of the Company Properties (owned by PLAINTIFFS) appeared inside of various MICROSEMI products.

76. Further in 2001 MICROSEMI through its partner AMANO had PLAINTIFFS' property in Japan 'seized' by Amano and made to 'disappear'. PLAINTIFFS assert that numerous parts of those systems now are sold daily as components of off-the-shelf products from MICROSEMI. As such MICROSEMI has waged a decade long intellectual properties war with PLAINTIFFS through four separate Corporation Mergers making this a Conspiracy of epic proportions.

77. Finally since there are Clayton Act Section Four Antitrust Charges in 2013 and a new Sherman-Act Section Two violation pertaining to events every 18 Months for the last decade continuing into 2013 against MICROSEMI itself, this continuing chain of discrete frauds by MICROSEMI tolls the Statutes from discrete events in the beginning of this ongoing fraud by use of the Continuing Offense Doctrine.²

The Impact on TRADE AND COMMERCE Of these Alleged Frauds.

78. As computers become the core of all commerce on the planet earth the networks which link them become an important enabling part of the commerce framework. PLAINTIFFS allege Commerce in Silicon Valley has become a cut-throat community of Corporate Execs doing whatever they wanted to prevent the loss of key personnel and their creativity or their work

² “The hallmark of the continuing offense is that it perdures beyond the initial illegal act, and that 'each day brings a renewed threat of the evil Congress sought to prevent even after the elements necessary to establish the crime have occurred.’” - Yashar, 166 F.3d at 875 (quoting Toussie, 397 U.S. at 122); see also State v. Legg, 9 S.W.3d 111, 116 n.3 (Tenn. 1999) (“[E]very moment an offense is continued, the offense is committed anew.”)

product from one company to another. This loss of personnel is actually tied to skills and information the personnel take with them from Job to Job. PLAINTIFFS allege that "This set of 'we will do whatever it takes' actions are evidenced by the sheer number of antitrust convictions in the last five years there" .

79. What has been absolutely proven based on convictions before DC Circuit Judge Walton and others here in the Ninth Circuit is that most of the Named Defendants have suffered convictions or have done lucrative settlements to stop prosecutions as fast as possible documenting their culpability in these association-wide frauds as evidenced in those prosecutions.

The War between Apple and its Competitors - all about stopping Apple's IP from migrating - at any cost.

80. To provide more detail from that Commerce-specific impact of Defendants' actions, for companies like the Defendants named here, the number one corporate goal now pertaining to stopping the transfer of Intellectual Properties between Giants (like APPLE and GOOGLE) has become important as stopping Digital Artists called ANIMATORS from 'flipping' from DISNEY/PIXAR to LUCASFILM, only in the engineering and tech sector those parties many times are taking actual copies of their last set of works with them in direct violation of Antitrust, Tradeseecret Law at the Federal level and Business Codes in the State of California. Today's Animators for instance are functionally very talented programmers who operate NLE (Non Linear Editing) and Image Rendering Computers instead of painting on a sheet of plastic cellulose. As such these people are CREATORS OF COMPUTER PROGRAMS AND COMPUTER CONTENT and that is what this stopping the flow of information is all about. Preventing that flow of uncontrolled engineering information from Apple to Microsoft, or Microsoft to Google, or Google to Ebay, or Cisco to Juniper, etc.

81. PLAINTIFFS' allegation today is that our Phase-II enforcement rights indirectly control, mitigate or directly control much of the Defendants' practices and methods as Computer Program purveyors and in the sales of those systems to resellers and end-users both. Hence they both infringe in their own use which was properly charged in the previous complaint but they also induce others to infringe which is properly charged in this complaint.

The alleged UNLAWFUL AGREEMENT

82. PLAINTIFFS allege because the core PHASE-II technologies control virtually all key aspects of secured location based services, that these named DEFENDANTS actively conspired and waged an ongoing war to prevent plaintiffs from either recovering the actual executed settlement agreement from MICROSEMI or being able to enforce it. As such they have violated the US Antitrust Statutes as alleged fully within this complaint.

83. "PLAINTIFFS FURTHER ALLEGE THAT AS NETWORKS AND THE EQUIPMENT WHICH IMPLEMENTS THEM BECAME 'SMART' THE PLAINTIFFS' PHASE-II TECHNOLOGY STARTED APPEARING IN APPLIANCES, NETWORK DEVICES AND PROGRAMS FROM ALL OF THE ONLINE COMMERCE VENDORS (the Defendants).

Continuing Saga of Antitrust in Silicon Valley : Unlawful Agreement to manipulate the markets and control the flow of Intellectual Properties between companies.

84. These matters PLAINTIFFS assert are another related part of the "Silicon Valley Antitrust Conspiracy" proven by the US Department of Justice (see Judge Reggie Walton USDC DC

Circuit's ruling in the criminal side of this same matter) in their High-Tech (civil) Employment Antitrust Matter before Judge Lucy Koh in San Jose currently.

85. In addition to MICROSEMI'S actions to prevent PLAINTIFFS from using or benefiting from the IP they are the creators of, PLAINTIFFS allege a superset of the group of the Defendants from USDC CAND San Jose 11-cv-2509³ (Ebay, Google, Apple, et Al) case , a Civil matter pertaining to "The manipulation of employment to prevent the unauthorized flow of information" as an anticompetitive alliance, are in this cause of action responsible for the same type of horizontal conspiracy with MICROSEMI to prevent PLAINTIFFS from enforcing rights against those parties and the products they sell which infringe PLAINTIFFS' rights.

86. In that precedent matter Employment Antitrust was used by those specific defendants, the same charged herein, to prevent critical proprietary information and specialized skills from being transferred as often occurs when an employee moves from one company to another. But make no mistake, that matter was more about Intellectual Property than a single person and its control in the High-Tech Capital of the World.

87. This Cause of Action then is a newly emerged superset of that same original Antitrust matter. While Adobe and the Movie Studio partners named in the original Antitrust Matter are in fact Infringers, with the Complaint its current size they are left off and noticed as DOES. We formally do name the other key parties including Microsoft in its infringing use of PLAINTIFFS' PHASE-II IP's in various things its sells and services it provides to third parties today.

³see CAND - In Re: High-Tech Employee Antitrust Litigation, 11-cv-2509

88. As such that PLAINTIFFS will seek to have portions of the ANTITRUST PROSECUTION address one of the key factors in the plausibility question - this is reoccurrence of something already happened. So the question as to whether this type of thing is possible is moot.

IETF's alleged Patent-Fraud Actions directly affect US PUBLIC TRADE AND COMMERCE.

89. Since the time that US6370629 Patent was filed, the Industry Standards Organization the IETF has taken methods which are protected as PHASE-II Technology under US6370629 and included them into their Network Standards.

90. PLAINTIFFS have identified over twenty infringing IETF document families and noticed IETF through its IP Rights ("IPR") website; as such PLAINTIFFS have properly noticed all parties for formal disclosure of our rights. This is a key part of any PATENT INFRINGEMENT INDUCEMENT claim as well.

91. Today infringing systems use PHASE-II IP as part of their Location Based Service libraries and in many applications developed and resold or provided as a service interface for some form of commerce (in just one instance, Defendant eBay's case their "time-centric secured infrastructure uses timestamps as control messages in their workflow process". This infringes on Claims 19-32 of the US6370629 patent. Many Cloud Systems vendors also use the same type of technologies in their synchronization algorithms as well. Most of the other providers, Apple, Google, Microsoft, Oracle also infringe in the same manner. In fact these systems cannot be used without infringing. They do not work properly without the enhancements that

PLAINTIFFS' PHASE-II IPs provide to those in the form of both User Experience and Functionality.⁴

Why is US6370629 a threat to those defendants?

92. PLAINTIFFS assert that since US6370629 today controls most online timestamping as a messaging service or trigger of some subsidiary event all of these vendors infringe. They all sell many products which either directly infringe or induce the end-user to infringe the patent's controls. The infringing components are built into both the network programs which they run to make those products accessible and the actual workflow of the programs running in those devices as well as Applications. So for instance the thing that tells you to turn left when you reach your destination in a cellphone navigator is an infringement. It is a blob of data triggered by a secure timestamp generated by some program. We refer to the documentation from USDC San Jose Apple v Samsung as evidence of the algorithms used.
93. As such these vendors' actions pertain to anticompetitive events in support of their preventing PLAINTIFFS from enforcing claims against those Defendants and obtaining proper licensing for their use of their protected intellectual properties in defendants' products and services.
94. PLAINTIFFS further assert that this antitrust action was executed through a series of both Vertical and Horizontal Conspiracy Components as charged; Additionally PLAINTIFFS allege a Clayton Act complaint against Defendant MICROSEMI. Finally this case raises three unique questions of Constitutional law making this an important case potentially.

Related Cases before the US District Court

⁴ This action then fully meets the 35 U.S.C. § 271(c) Hurdle for proving contributory infringement as set in Vita-Mix Corp. v. Basic Holding, Inc. , 581 F.3d 1317, 1327 (Fed. Cir. 2009).

95. PLAINTIFFS assert this cause of action pertains to a superset of the parties in the antitrust employment control scandal attributed and then prosecuted on Apple, Google, Ebay, and others named in this said same cause of action. USDC CAND San Jose 11-cv-2509.
96. Additionally in addition to the HIGH_TECH EMPLOYEE ANTITRUST MATTER this case is another 'fractal' of, this matter appears to be similar to a case already decided in this the Ninth Circuit - that being *Cascades Computer Innovations LLC v. RPX Corp.*, No. 4:12-cv-01143 (N.D. Cal.). Like Cascade in this case plaintiffs allege MICROSEMI and its partners ran a *hub and spoke conspiracy* with Defendant IETF and its members across international borders as an action to prevent PLAINTIFFS' enforcement rights from being realizable. Further it relies on the PERFORMANCE RIGHTS concepts set in Judge Alex Kozinski's ruling in Garcia⁵ as well.

This Case Raises 3 Unique and Novel Questions of Constitutional Law

97. In addition to its focus on MICROSEMI'S US and international patent frauds this cause of action asks three unique questions of Constitutional Law pertaining to the US Copyright Act and performance rights (a la Garcia), it also asks in regard to the US Government's ability to 'say no' to a prosecution demand by a victim of IP Fraud; And finally it asks for relief from the Administration's "alleged use of FISA and/or PD 12333 in this matter to issue documents which create a tangle-foot web for PLAINTIFFS' Counsel, preventing their effective representation.

⁵ Garcia v Google - Ninth Circuit Appellate Ruling No. 12-57302

Constitutional Law Question One - Does the inclusion of a PATENT PROTECTED set of controls in a COMPUTER PROGRAM protected under the Copyright Act entitle the PATENT OWNERS to COPYRIGHT ACT PROTECTIONS (PERFORMANCE RIGHTS, Duty to Account, etc) against the execution of that PROGRAM???

98. The first question we raise pertains to the real world situation of what PLAINTIFFS' rights are to the IETF's conversion of the methods inside of US6370629 and their being placed without authorization from PLAINTIFFS into numerous instances of the IETF's globally-used network standards.
99. The question PLAINTIFFS raise is about "what happens when a copyrighted instrument like a computer program (or a network standard from which computer programs are derived) contains patent-protected material which it cannot operate without such that every program written to comply to that ["standard"] becomes an active infringement when executed?"
100. Does it for instance create a PERFORMANCE RIGHT under the COPYRIGHT CODE for PLAINTIFFS pertaining to the execution of that program for the Patent Protected IP Rights owner?
101. And further answer whether those rights survive the Patent's Expiry itself since Copyrighted programs implementing a patent protected IP should be enforceable through the terminus of the Copyright. PLAINTIFFS Allege MAZER allows for this PERFORMANCE RIGHT CONSIDERATION and ask for a ruling as such. ⁶

⁶ In a landmark decision, Mazer v. Stein, 347 U.S. 201 (1954), the Supreme Court ruled that the same disclosure or publication might support a design patent and a copyright.

Constitutional Law Question Two - Is the US and State AG Discretionary Standing eliminated by Ratification of the NAFTA, TRIPS and PCT agreements

102. The next question of constitutional law this matter raises is "what the limitations of the US Government's (the Executive Branch's) ability to say 'no' to a prosecution demand are when that demand pertains to IP which is constrained by one of the International Treaties with mandatory enforcement clauses which were ratified by both the President and Senate". As background generally speaking the Attorney General may refuse any prosecution demand as a discretionary control of the office of the Attorney General. But the question we raise is that when a contractual agreement in the form of a Treaty with another nation is signed saying that the US Government will prosecute these matters, this standing down in light of prosecution demands from PLAINTIFFS becomes a performance issue on the Treaty; Especially when that Treaty is ratified by both the Executive Branch and the Legislative Branch of the US Government themselves. That ratification of the President's signature is a promise to fully enforce the Treaty Terms and the refusal of the US DoJ to prosecute the frauds herein which PLAINTIFFS allege are absolutely air-tight, became a denial of the US Standing under these Agreements, and as such voided them all it seems.

103. The PLAINTIFFS assert in this Cause of Action that the Congressional override on the Trade Agreements takes that discretionary ability away, and further that POTUS approved this change to both the Presidents and Attorney's General authorities when the Trade Agreements were executed as well; and

Constitutional Law Question Three- Administration's alleged use of a NSL or other instrument and/or FISA to interfere with PLAINTIFFS' access to counsel

104. Finally the third and possibly most important Constitutional question with regard to the Courts themselves and the potential of the chilling effect the service of a NSL or other National Security based Warrant in a civil prosecution for the non US Government attorneys involved.
105. PLAINTIFFS assert that our Attorneys will not answer direct questions about whether they have been served or not which any Attorney not served as such would be able to freely comment on. The use of FISA or like legislation to issue a warrant to PLAINTIFFS' Counsel would prevent their disclosing this to their Clients.
106. PLAINTIFFS attest that this action,. with the use of a National Security Letter or other action under Executive Order 12333 by the Administration, the US DoJ can effectively stop a civil prosecution by making it impossible for an attorney to even talk with their client about their case and whether that was done by US DoJ, State, the National Intelligence Community, the DoD and/or other Federal Agency capable of enacting such a thing, or the WH itself in this matter the effect is the same, total prevention of the Citizens' access to the US Judicial System, representing a total collapse of the US Justice system. Since FISA is classified we seek assurance from the Court that such an order was not used and does not impact our access to the Courts in the United States.

Jurisdiction

107. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code and Antitrust Actions arising under the Sherman and Clayton Acts. As such the US District Court is the correct Court to file this action before.

108. That this matter alleges violations of the Sherman Act Sections One and Two, The Clayton Act Section Four by Industry Defendants and MICROSEMI, and finally for both the State of California and the US Government "violations pertaining to ***reciprocal nondiscriminatory enforcement of treaty agreements***" under PCT, TRIPS and NAFTA as well as Patent fraud statutes pertaining to US and Foreign US6370629 and US63903126 filings.
109. This litigation further three questions of Constitutional Law including one on the interaction of Patent Protected IP inside of a Copyright Infringement under Title 17 and asks if this creates Performance Rights section of the Title 17 US Code as a key factor in controlling Interstate Commerce. Something that only a USDC and Appellate Court will have jurisdiction over.
110. Additionally under 15 USC section 4 and under 28 USC 1331 and 1337 that this court has SUBJECT MATTER JURISDICTION on the Fraud and Patent Claims as well as the authority to order the establishment of the IRC165 Fraud Loss PLAINTIFFS are requesting as relief herein, as well as the power to restrain those defendants from Violating the Sherman Act Section One and Two and to restrain MICROSEMI from its violation of the Clayton Act Section Four as well as find against those violating 35 USC 271 sections (a), (b) and/or (c) in their infringing against PLAINTIFFS' rights to enforce their PHASE-II Technologies against Defendants, one and all.

Venue

111. PLAINTIFFS state that the VENUE is also proper under Section 12 and 14 of the CLAYTON Act and other Federal Standards including 15 USC 22 and 28 USC 1391 (b)(2) (c) as all parties transact substantial business here.

Timeliness

112. This matter is timely based on recent refusals from MICROSEMI to perform verifications under the contracts terms; and also to acknowledge the Settlement Contracts themselves as the CONTRACTS both called for; something PLAINTIFFS allege is a new Clayton Act violation in 2013 as part of its Merger to Symmetricom.
113. Additionally MICROSEMI withheld the Executed Copy of the DDI Settlement Agreement until Feb26th 2013 when their Attorney John Burton turned it over to PLAINTIFFS for the first time ever. This turn-over in 2013 started various Sherman Act clocks ticking as well but created another incident act in the Continuous Offenses committed by MICROSEMI against PLAINTIFFS.

CONTINUOUS OFFENSE DOCTRINE VIOLATION

114. PLAINTIFFS claim a CONTINUOUS OFFENSE DOCTRINE matter operated by MICROSEMI in concert with Defendants who are mostly all members of defendant IETF in this cause of action.
115. As such this matter is composed of "a continuing set of specific discrete events each in furtherance of the larger continuous offense", that being ***the preventing of PLAINTIFFS' enforcement rights for their Patent from being recovered.***

Continuous Offense Claim and Jurisdiction/Venue

116. In regard to Continuous Offenses, this court has subject matter jurisdiction pursuant to 28 .S.C. 1331 and 1338(a). Since PLAINTIFFS and MICROSEMI are located in Silicon Valley,

this Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

PLAINTIFFS' Standing

117. Irrelevant of ANY ENFORCEMENT RIGHTS PLAINTIFFS' Standing is created for claiming IRC165 Fraud Losses by their Contracting with Mark Hastings of DDI (aka MICROSEMI) to file and manage a patent for PLAINTIFFS as the inventors and licensors. Mr. Hastings sold PLAINTIFFS' Patent to a Firm which PLAINTIFFS were consulting for and took a job as a C-level Officer of MICROSEMI (as Datum Inc) at which point he became adversarial and with Datum sued PLAINTIFFS through a Sham Litigation to force the turn over of PLAINTIFFS' property.
118. As such PLAINTIFFS have a 100% loss against all six of the Patents filed from US6370629 including '629 itself. PLAINTIFFS have identified many infringing systems which we today have to write down total enforcement losses for totaling the largest fraud loss in history since it is still escalating daily and will continue to through the terminus of the patent's publication and enforcement period in the US.
119. In this, the SECOND AMENDED COMPLAINT, the PLAINTIFFS assert they have BOTH PATENT enforcement rights [created and supported in the original filing Co-Inventor Agreement and the Settlement]; and
120. Further that based on the IETF placing those Patent Protected Methods inside their Standards, that for any program built to operate under that IETF Standard, that PLAINTIFFS enjoy a full set of JOINTLY OWNED COPYRIGHT ENFORCEMENT RIGHTS herein pertaining specifically to COPYRIGHT PERFORMANCE RIGHTS against the execution of

programs which the IETF designed which contain PLAINTIFFS' PHASE-II Technologies. PLAINTIFFS as such have Third-Party Enforcement standing confirmed in a number of manners.

121. The FIRST CONFIRMATION is that the DDI SETTLEMENT HAS PLAINTIFFS AUTHORIZING DATUM (as the first third party license). ALL OTHER PARTIES ARE COVERED FROM THAT SAME MODEL. PLAINTIFFS can license similarly to any third party based on the SETTLEMENT ALONE.

122. This is further reinforced by the CO-INVENTOR AGREEMENT terms about enforcement. As to the issue of competition, that is covered under PLAINTIFFS' NDA agreement with MICROSEMI. PLAINTIFFS notified MICROSEMI of infringements and demanded under the NDA that those were now Controlled Instances of Information Belonging to PLAINTIFFS per the terms of the Settlement and only the PLAINTIFFS as such could enforce against those parties.

123. PLAINTIFFS' Standing is further justified by the Korzybski Doctrine which states Korzybski "must rest upon the assumption that the owner of the statutory monopoly has some power to protect his 'work,' for otherwise any dedication would be without consideration."⁷

Either Document - Co-Inventor Agreement or Settlement gives PLAINTIFFS Standing to Sue and enforce against third parties

124. PLAINTIFFS assert that either of the two documents, the Co-Inventor Agreement and or/the DDI Settlement Agreement provide the PLAINTIFFS with full enforcement against any and all third party infringers, and that this has been blocked by Microsemi to protect its industry partners that are actively reselling in the millions of devices they have in service

⁷ Korzybski - 260 F.2d at 642.

today infringing on PLAINTIFFS' IP Enforcement Rights as the Sole Owners of PHASE-II Technologies; the ones protected under the Umbrella of US6370629. PLAINTIFFS assert this constitutes an actionable cause herein.

125. In closing the idea on the establishment of PERFORMANCE RIGHTS for PLAINTIFFS against DEFENDANTS' programs implemented which "in some unauthorized manner contain this patent protected IP", with regard to MICROSEMI'S intent and its actions per the terms of the disputed DDI Settlement PLAINTIFFS reassert "that PLAINTIFFS only licensed MICROSEMI for *the limited use in the Confidential Courier based products defined in the settlement*. All other uses including all direct and indirect third party enforcement were retained by PLAINTIFFS, that their actions in withholding the settlement to stop both its enforcement and court review is a key concept here".

126. As such based on unlawful filing and abandonment, refusal to honor the contract and act properly as PLAINTIFFS' FIDUCIARY in managing the PATENTS contracted for with MICROSEMI, MICROSEMI'S actions over the last 12 years speak for themselves prove the CONTINUING OFFENSE claim fully.

PLAINTIFFS are finally able to ask the Question - Is this Settlement even legally enforceable or it is void based on the Talbot Precedent?

127. PLAINTIFFS assert that from executing the terms of a settlement contract MICROSEMI obtained from PLAINTIFFS under extortive conditions, and which it then withheld from PLAINTIFFS for twelve years, that PLAINTIFFS have finally recovered their rights and now seek to test the Settlement or have it declared void it before the Courts.

128. PLAINTIFFS are concerned that Talbot v Quaker State Oil Refinery causes this settlement to be void because it (the TTI and DDI Settlements both) are missing exactly the

same piece which was grounds for voiding the contract in Talbot, and so with the filing of this Second Amended Complaint will move the Court to immediately review that document for its status under Talbot and if necessary order its being voided under the Talbot Precedent. Both have reporting and notice statement sections and no way of implementing those practices, something which PLAINTIFFS have repeatedly demanded MICROSEMI cure by adding the missing pieces of the contracts which current court precedents mandate so the PLAINTIFFS can properly execute their rights. MICROSEMI refuses to publish any of the requested documents and has for the last 12 years.

PLAINTIFFS' Enforcement Rights exist in both the Co-Inventor Agreement and the Settlement

129. PLAINTIFFS state that whether the Settlement Agreement is void or not PLAINTIFFS still have third party enforcement rights, as will be demonstrated in reviewing the contingency section of the Co-Inventor Agreement which makes both patents the property of the plaintiffs in this specific situation. Thus if the Settlement is voided by the court, at this late date it would trigger the contingency transfer language in the Co-Inventor Agreement making the original 992 Patent and the Amended 629 Patent property solely of PLAINTIFFS.

130. As to the ongoing infringements which PLAINTIFFS as the PHASE-II Rights Owners have 3rd party Enforcement rights against, we seek to enforce those as well.

PLAINTIFFS' Noticing of MICROSEMI as to who Infringers are and how under the NDA creates a PLAINTIFFS ONLY ENFORCEMENT MODEL

131. PLAINTIFFS prepared for the issue of "how to stop MICROSEMI from approaching PLAINTIFFS' licensee targets with another competing offer". PLAINTIFFS created direct

statements of who those parties were and formally disclosed them to MICROSEMI under the TERMS OF THE NDA SECTION OF THE SETTLEMENT that MICROSEMI itself is the sole author of.

132. PLAINTIFFS assert that this FORMAL ACTION ON PLAINTIFFS' PART serves to *create a wall between the problems MICROSEMI created when it refused to complete the contracts and prevents MICROSEMI from approaching or even discussing an alternative licensing offer to those parties identified to it under the cover of the NDA and their infringements. The use of this aspect of the NDA controls*, all of the disclosures between PLAINTIFFS and MICROSEMI since the settlement was created and setup for the PLAINTIFFS a unique control practice for noticing Microsemi on Infringers per what is necessary under TALBOT to make the settlement enforceable. I.e. PLAINTIFFS have done everything possible to CURE the missing Documents necessary under TALBOT to make both Settlements enforceable and Microsemi has prevented and blocked the production of those documents since 1999.

133. PLAINTIFFS also disclosed under the NDA all of the Infringers' infringements to the level of general analysis and in many instances to the claim level in the US6370629 patent. As such PLAINTIFFS have identified and disclosed their specific class of infringements to MICROSEMI under our NDA which prevents MICROSEMI from any licensing of any of these IP to those parties. All of those documents showing infringements will be added to the larder of case documents.

134. Parties' enforcement rights, under the Joint NDA PLAINTIFFS have disclosed the names of all of the infringers to Defendant MICROSEMI. PLAINTIFFS under the NDA sent MICROSEMI specific Infringement Analysis and Enforcement Notices against a number of

Defendants. MICROSEMI apparently contacted a number of them in direct violation of the NDA in the Settlement and assured them they would not let PLAINTIFFS enforce against those parties products, and somehow most of those parties wound up as MICROSEMI customers. What is generally known as a balance-of-trade agreement in market manipulation schemes.

The IETF's unauthorized use created a unique PERFORMANCE RIGHT against the execution of Programs derived from PLAINTIFFS' PHASE-II Controls.

135. And at the end-of-the-rainbow since third-party enforcement is the issue, users of IETF and other Software Models dependant on noticed Standards Groups use of that same IP (like OpenGeoSpatial and OASIS or IEEE) which are licensed therein are tied to PERFORMANCE RIGHTS considerations PLAINTIFFS' hold under the Mazer SCOTUS precedent and Garcia Ruling from the Ninth Circuit; Both creating a unique survivable enforcement right for PLAINTIFFS which is further strengthened by the Copyright Act's Duty to Account as well.

Plausibility factor (Ok it sounded Looney originally but...)

136. Under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The “plausible” standard requires more than showing that liability is merely possible or conceivable.
137. While the idea of an Industry-wide conspiracy sounded impossible the US DoJ's antitrust conviction in the employment letters matter as part of the High-Tech Employment Antitrust issue, proved that conspiracies which would critically protect the defendants' corporations in

those matters did in fact exist and were in operation through the period of the PLAINTIFFS' damages.

138. Since none of the defendants named can operate without infringing on US6370629's PHASE-II Technologies the idea they would band together to prevent PLAINTIFFS' enforcement is also much easier to prove at this point. Letters between Steve Jobs to Eric Schmidt about protecting the companies' IP are critical and document the underlying tone at the top of the Companies accused in this cause of action.
139. The principal defendants in this matter are the same as those of the Silicon Valley Antitrust matter up before Judge Lucy Koh in the San Jose District Court, and which also stood before Judge Reggie Walton of the USDC DC Circuit for Antitrust violations of a Criminal Nature.
140. For a standards agency to take patent protected IP and then create a program which infringed that patent and then re-license the use of that around the protections of the patent to their users, would be a crime against public interest in the functional setting aside of US patent protection in favor of a copyright of questionable authenticity⁸.
141. PLAINTIFFS assert this litigation then completes bringing to daylight the final action in that industry wide antitrust matter, what the PLAINTIFFS assert in this Complaint has been Wholesale Manipulation of the Global Standards Agency called the IETF.
142. PLAINTIFFS' allegation in our matter is simply another aspect of the same sets of frauds since US63709629 controls many of the functions these parties use in their day to day operations, hence they are all major infringers. Further since the infringing protocols cannot be used in any manner without infringing the creation of these dependencies in Defendants'

⁸ See Weissman v. Freedman, 868 F.2d 1313, 1318 (2d Cir. 1989); see also 17 U.S.C. § 103

products and services on PLAINTIFFS' proprietary IP has caused PLAINTIFFS significant damage.

143. So the banding together of the Defendants into a formal conspiracy is very plausible as a group to work to prevent PLAINTIFFS' recovery, and that potential is one of the legs of this claim.

MICROSEMI

MICROSEMI Tortuous Interference claim(s)

144. PLAINTIFFS assert these alleged *continuing offense* actions in continuing to deny PLAINTIFFS' rights and refusing to perform per the terms of the settlement, are all part of a Continuing Offense which MICROSEMI and its partners have used to tortuously interfere with PLAINTIFFS' rights and in that action have implemented a group-wide effort to prevent the DEFENDANTS from being liable to PLAINTIFFS for their unlicensed use of the PLAINTIFFS' Intellectual Properties.
145. Through this effort MICROSEMI and its executives waged a decade plus long war including denying PLAINTIFFS' right to third party enforcement rights and misrepresenting PLAINTIFFS' rights to key investors to prevent their properly commoditizing their IPs.

MICROSEMI Fraud Allegations

146. MICROSEMI'S filing and abandonment of five unauthorized foreign instances of US6370629 is a matter of record and PLAINTIFFS can ask for Summary Judgment on that claim alone. But the Fraud Enhancement takes proving intent and PLAINTIFFS allege these actions "in abandoning five foreign patents by not paying small statutory fees in the filing

and advancement process" and then later to filing Notice with those Patent Agencies
PLAINTIFFS could not recover those abandoned patents is a clear action against
PLAINTIFFS' interests.

147. PLAINTIFFS allege in this complaint that these acts were performed by MICROSEMI in concert with its partners in MICROSEMI'S alleged Vertical Conspiracy with its resellers (Cisco et Al) , to prevent PLAINTIFFS' rights from being implemented.

MICROSEMI: SHERMAN ACT Section Two Violations:

148. MICROSEMI has allegedly committed a number of Sherman Act violations (Section One and Section Two) and several Clayton Act (Section Four) violations in its alleged effort to prevent PLAINTIFFS from being able utilize their property and to dilute its Market Power in violation of US Antitrust Law.

First Sherman Act Section-Two Violation

149. PLAINTIFFS' allegation is that MICROSEMI Management has planned and led a "Continuing Offense for at least 12 years to deny the existence of the DDI Settlement Agreement and to damage PLAINTIFFS' Market Power from their PHASE-II technologies which make up US6370629.

150. That further MICROSEMI did this because they know that the withheld settlement was likely voided by Talbot v. Quaker State Oil Refinery (TALBOT: 28 F. Supp. 544 (1938)) precedent set in the Supreme Court; But without an executed copy PLAINTIFFS would be unable to have this, the Trial Court review of that contract for its standing and enforceability.

151. Again, PLAINTIFFS allege the withholding of the Executed Settlement Agreement itself was a continuing act which terminated on February 26th 2013 with the turn-over of a photocopy of the fully endorsed contract.
152. As to how the document was withheld. PLAINTIFFS further assert that the Settlement Document was originally delivered to PLAINTIFFS with an altered Signature Page. When its replacement was Demanded by PLAINTIFFS with a fully wet-signed copy MICROSEMI refused and the 12 year action started; An Action PLAINTIFFS assert was performed by MICROSEMI to prevent them from proving their claims or even getting court review of that document.
153. **TORTUOUS INTERFERENCE:** PLAINTIFFS also assert that this willful set of frauds (altering the signature page, withholding the document until 2/26/2013, denying for all for those 12 years that plaintiffs had any rights, etc.) constitutes tortuous interference with PLAINTIFFS' Economic Standing and that by the Settlement being withheld after its Execution, the altering of the Signature Page, as well as their acts of TI over the same 12 year period, MICROSEMI tortuously interfered on an ongoing basis with PLAINTIFFS' economic advantage and their commercial prospects under the Sherman Act Section Two.
154. That during the period that MICROSEMI withheld that document from PLAINTIFFS it repeatedly "told all parties that inquired" initially that the document "didn't exist" and then later that was remodeled with an admission that "the document was created but never executed", and finally when PLAINTIFFS sent executed copies of the documents to those who had tried to verify under section 8.3, 8.4 and 8.7 of the contracts what PLAINTIFFS' rights were, that they (the Defendant MICROSEMI) would prevent PLAINTIFFS from enforcing their claims against MICROSEMI'S partners operations.

155. PLAINTIFFS assert this forms a number of VERTICAL CONSPIRACIES in the context of Antitrust under both the individual (section two) and the group charges (section one) of the Sherman Act.

Second Section-Two Violation

156. In the process of withholding these documents MICROSEMI itself registered US6370629 filings in Brazil, Japan, Canada, and the EU with no releases for them and then "abandoned" those after filing their replacement instance of US6393126 to give the company its own patent. A patent based on IP from US6370629 and the TTI IP PLAINTIFFS licensed for limited use to MICROSEMI. These unauthorized patent filings in Canada, the EU and other World Patent filings created those instances of US6393126. The filing of the '3126 patent constitutes an independent Sherman Act Section Two Claim.

Third Section-Two Violation

157. MICROSEMI (in collusion with its Japan Reseller AMANO Corporation) engineered the fraudulent bankruptcy performed by CertifiedTime CEO Mark Williams.

158. Since PLAINTIFF Glassey was a board member of that corporation, and was not at the board meeting alleged to occur wherein the Bankruptcy was formally approved, and without PLAINTIFF'S presence in that matter there at the meeting because of empty board seats there could be no quorum.

159. MICROSEMI since that time has taken software from that system and other design components which were integrated into a number of its current products including its National Timing System stack. MICROSEMI'S alleged actions in manipulating Amano and causing the destruction of CertifiedTime Inc so that it could absorb more of PLAINTIFFS' Ideas and Technologies is another Sherman Act Section-Two violation in manipulating the

market. It also constrains potentially criminal actions with its partner in the theft of properties sold to PLAINTIFFS; by US Bankruptcy Court in BK 01-54207-MM in San Jose California. The act of taking these from PLAINTIFFS' site in Japan and then re-importing them into the United States for use inside MICROSEMI'S systems constitutes a Sherman Act Section Two violation as well.

Fourth Section-Two Violation

160. Additionally as a Section Two act violation, the IETF standards practice when it takes content not authorized and publishes it for use under the IETF's new copyright claim violates the protections that Section 102 of the Copyright Act creates.
161. In fact the IETF copyright on any document containing unauthorized technical standards content protected under another Copyright or Patent has become the issue.

COUNTS

162. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-159.
163. For all Counts, PLAINTIFFS are the owner of "all rights, title, and interest" in U.S. Patent No. US6370629 with regard to the components called PHASE-II technology within that patent. PLAINTIFFS have suffered enforcement losses against all five foreign instances of US6370629 filed by MICROSEMI.
164. Defendants have profited through infringement of the PLAINTIFFS' Patents. As a result of Defendants' unlawful infringement of the PLAINTIFFS' Patent protected IP enforcement rights, PLAINTIFFS has suffered and will continue to suffer damage.

165. PLAINTIFFS are entitled to recover from Defendants the damages suffered by PLAINTIFFS as a result of Defendants' unlawful acts.
166. On information and belief, Defendants' infringement of one or more of the PLAINTIFFS' Patent protected IP enforcement rights is willful and deliberate, entitling PLAINTIFFS to enhanced damages and reasonable attorney fees and costs.
167. On information and belief, Defendants intend to continue their unlawful infringing activity, and PLAINTIFFS continue to and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendants are enjoined by this Court.
168. For all of the following Counts, PLAINTIFFS are the owners of all rights, title, and interest in the PHASE-II Technologies as protected under the '629 patent, entitled "Controlling Access to Stored Information [with time and location]" duly and properly issued by the U.S. Patent and Trademark Office in April of 2002. PLAINTIFFS are also the sole owners of the TTI technologies specified inside of US Patent 6393126, a patent issued to MICROSEMI without any filing authorization from PLAINTIFFS.

Notice of Potential for Request to either further clarify complaints or add new fraud and an additional SOX406 related claim

169. PLAINTIFFS anticipate DISCOVERY also revealing proof of two other Sherman Act claims and a string of Clayton Act violations for MICROSEMI and potentially fraud claims in related violations across the entire chain of Defendants. As such PLAINTIFFS are noticing the Court that Discovery will likely lead to additional *or better refinements to the existing claims* and to the naming of three DOES (Adobe, Disney/Pixar and Lucasfilm) and their specific 35 USC 271 infringements for (b) and (c) infringements who have currently emerged

since the filing of this case originally so PLAINTIFFS notice that there may be grounds for a proper Third Amended Complaint as well to be filed once certain preliminary matters are resolved in this cause of action.

170. Additionally a POSITIVE RULING from this the Trial Court pertaining to the Fraud Loss qualification will document frauds in the Infringing Corporations' Management opening them to SOX section 406 claims and litigation therein as PLAINTIFFS are stockholders in a number of the Defendants today who are regulated by the SOX act itself.

COUNT 1 - MICROSEMI: Infringement of PLAINTIFFS' PHASE-II Technology; Fraud; Sherman Act § 1 and § 2 Violation; Clayton Act § 4, Operating a Hub and Spoke /Horizontal Conspiracy to restrain trade in violation of § 1 of the Sherman Act, Tortuous Interference

171. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-170.

Microsemi uses infringing technologies in its sale of non-licensed equipment including its TIMESYNC system

172. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation, MICROSEMI TimeSync and other systems using IETF protocols based on the infringing IP. MICROSEMI'S limitation is for use inside of ConfidentialCourier(tm) products, not IETF products in any form. As such any IETF protocol appearing inside a MICROSEMI device which infringes which MICROSEMI delivers copies of are inducements to infringe for the end-users.

US6370629 unauthorized filings and related abandonment's

173. SHERMAN-ACT SS2: MICROSEMI filed and then abandoned six (6) copies of US6370629 only one of them authorized. Five of the six were abandoned either before or at publication time.
174. Those abandoned filings were then replaced with a patent which named MICROSEMI (US63903126) itself as the inventor with many of the same claims and some from other IP (the TTI) PLAINTIFFS licensed to MICROSEMI for very limited uses only.

Microsemi TTI Contract Violation

175. PLAINTIFFS are also the sole owners of the core technologies comprising the TRUSTED TIMING INFRASTRUTURE that MICROSEMI licensed the design of three derivatives of actual TTI systems and the use of the term "Trusted Timing Infrastructure" as a Trademarkable Market Identifier.
176. The actual GMT TTI is a set of thirty two components providing a set of models analogous to Judge Paul Grimm's relative-value in Digital Evidence templates. It was designed in mid 1996 while PLAINTIFFS were members of the ABA Information Security Committee working on legal standards in the ABA as resident technologists in the Science and Technology Track and the Information Security Committee. PLAINTIFF Glassey is published in the PKI Assessment Guidelines of the American Bar Association as a note as well. The PLAINTIFFS' original TTI as presented to MICROSEMI under NDA provides four (4) separate trust practices and the mechanical technology specification (an array of eight components to provide and track the various trust models implemented). The intent of the TTI was to pre-define the methods of providing provable time from a legal context into a computing environment something no other systems than the TTI actually do today.

177. MICROSEMI declined to build the GMT TTI and instead wanted to license three components of that set of tools for a mini TTI of Microsemi components they were marketing. Those are the three components described in the TTI Settlement Document that are particular to MICROSEMI.
178. The Settlement has no provisions for MICROSEMI'S filing of any patents whatsoever based on the TTI.
179. MICROSEMI filed three patents based on the TTI PLAINTIFFS are aware of, a World Patent, Canada and the US as US6393126. This act by MICROSEMI violated the Sherman Act Section-Two for the unauthorized filings and then abandonment of US6370629 in Japan, Brazil, Canada, the EU and South Africa- a clear market control action which has enforcement potential.
180. As such the TTI Patent (US6393126) is neither authorized nor contemplated by PLAINTIFFS, and a Sherman Act Section Two violation. For the Court's Information, the GMT TTI is a Security Framework for distributing and verifying TRUSTED TIME in COMPUTING INFRASTRUCTURE AS A PART OF PLAINTIFFS' "DIGITAL EVIDENCE PROTOTYPES".
181. Later after extorting the Settlement Agreement from PLAINTIFFS MICROSEMI withheld the executed copy of the DDI Settlement Agreement to prevent the PLAINTIFFS from being able to have a court review it for its enforceability and then denied the contract existed to the parties PLAINTIFFS sent to verify PLAINTIFFS' rights in violation of the Settlement itself, an act of Tortuous Interference by Defendant MICROSEMI against PLAINTIFFS. Additionally over the period it withheld the DDI Settlement from PLAINTIFFS Defendant MICROSEMI acted in concert with Defendant IETF Standards

Agency to "allow PLAINTIFFS' protected PHASE-II IP to be placed into Network Standards" used by the other Defendants in their commercial products in violation of PLAINTIFFS' IP Rights. (All Sherman Act violations, Section One with IETF, and Two because of its withholding the document itself.)

182. Additionally in 2001 PLAINTIFFS allege MICROSEMI had its Agents in Japan AMANO Corp seize (Amano freely admits this) and then turn over to MICROSEMI materials in AMANO's possession in Japan including PLAINTIFFS' Software, NIST Time Servers purchased from the US Government (three of them) and two MICROSEMI Model 5071A Atomic Clocks manufactured specifically for PLAINTIFFS, another Sherman Act Section Two violation as well by both MICROSEMI and Amano Corp its Japan Reseller since parts of these were sold under a US Bankruptcy Sale Order (see Exhibits Docket 6) to PLAINTIFFS. Another Clayton Act Section Two action.

183. CLAYTON ACT Violation of 2013: Under the Clayton Act § 4 PLAINTIFFS allege that per the TTI and DDI settlement agreements there is a role of FIDUCIARY Created with each 'baton pass' between successors and the party they succeed. In becoming the Successor to Symmetricom, per Sections 8.3 and 8.4 and 8.7 of the contract, MICROSEMI must "agree" meaning they must create a document saying they will be bound by the terms of the contract as an amendment to the Contract itself. MICROSEMI has refused and so is in breach of the Contract itself and in violation of the Clayton Act Section Four.

**COUNT 2 - Microsoft: Infringement of PLAINTIFFS' PHASE-II
Technology enforcement rights**

184. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-184.

185. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation, Microsoft Location Based Service library and Microsoft Activator Modules and the related software loaded onto these fixed location, mobile and handheld electronic computing devices. Other Microsoft components like Windows Embedded NavReady(tm) components infringe as do a number of more mundane Microsoft systems including the Microsoft Patch Process, the Service Pack Bundling system, and a number of other applications infringe based on their operations including but not limited to Microsoft

186. PLAINTIFFS assert MICROSOFT was formally properly noticed and with IETF publications PLAINTIFFS have met the burden properly of Noticing Microsoft on its Infringements. Finally the Microsoft SKYPE and its Image Tools also infringe. in their use of IP protected under claims 19-32 of the US6370629 patent.

**No Microsoft uses which do not infringe on PLAINTIFFS' US6370629 protected
PHASE-II IP Rights.**

187. PLAINTIFFS finally allege many if not all of Microsoft's products cause its end-users to infringe PLAINTIFFS' enforcement rights on PHASE-II Technologies. Like most other Infringers there is no possible way to use Microsoft Operating Systems or its Network

Interfaces without Infringing. PLAINTIFFS' PHASE-II technologies are today an integral part of the Microsoft Active Directory and OS systems such that they cannot be used without infringing.

COUNT 3 Google: Infringement of PLAINTIFFS' PHASE-II Technology enforcement rights

188. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-187.

189. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limited to Google Location Based Service library and Google Software Installer and Activator Modules; And the related ChromeOS and Android software loaded onto these fixed location, mobile and handheld electronic computing devices, including but not limited to Chrome OS and Android Mobile Phone and Access Devices from all manufacturers, GoogleWallet, Google Glasses, Youtube GeoTagging, GoogleMaps, GoogleCar and GooglePlane control systems; Google internal back-end Data Replication and reprovisioning schemas for data-mirrors from site to site and other infringements, Google Search Engine Optimization and Advertising Reselling through time-controlled and location controlled selection of advertising.

No Non-infringing uses of named Google Products.

190. There are no non-infringing uses of these GOOGLE Products. PLAINTIFFS finally allege Google's products cause its end-users to infringe PLAINTIFFS' enforcement rights on PHASE-II Technologies and for many of them there is no possible use of them without infringing PLAINTIFFS' PHASE-II IP Rights. Particularly also the use of the encrypted modem chip Android Phones makes their Location Based Service operations fully infringe at a no-possible use without infringing level as well.

COUNT 4 Apple: Infringement of PLAINTIFFS' PHASE-II Technology enforcement rights

191. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-190.

192. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation, Apple Location Based Service library and Apple Software Installer and Activator Modules in MacOS and MOCHA, and its new Geotagging and ApplePAY (digital wallet) systems directly infringe both in the daily operations of the Apple Infrastructure as well as on a per-event basis for the End-Users Apple sells these infringing services to.

193. That these infringing products include but are not limited to those names the iPhone and iOS its operating system itself, iPad and iPad MINI units as well as other Apple products

which are only Software in Form. This includes certain applications APPLE operates as well including ones which resell via iTunes and the media resale systems represented by the iTunes storefront on the world-wide-web.

194. Additionally this also applies to all GeoTagging, AppleMaps, APPLE internal back-end Data Replication and reprovisioning schemas for data-mirrors from site to site and other infringements including Apple iTunes Cloud computing systems and others. As with many others all of these Apple systems infringe by their very use.

There are no non-infringing uses of these Apple Products.

195. There is no possible way to use the names Apple Products without infringing on processes and methods protected by PLAINTIFFS' PHASE-II IP Rights. Particularly also the use of the encrypted modem chip in iPhones makes their Location Based Service operations fully infringe at a no-possible use without infringing level as well.

COUNT 5 - Oracle: Infringement of PLAINTIFFS' PHASE-II Technology enforcement rights

196. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-195.
197. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation Solaris's Location Based Service library and both Solaris and Oracle product Installer and Activator Modules (SUNOS, Oracle LINUX, Sun

SOLARIS and the Oracle Applications Suites (Financial, Manufacturing, Support, etc.) and the Oracle Cloud Commercial computing services.

198. This INDUCEMENT TO INFRINGE also applies to most of the other DEFENDANTS' use of DEFENDANT ORACLE'S products in their "internal back-end Data Replication and reprovisioning schemas" for data-mirrors and from site to site and other Cloud type operating infringements.

There are no non-infringing ways to use the Oracle Applications Suite.

199. PLAINTIFFS finally allege any number of ORACLE'S products cause its end-users to infringe PLAINTIFFS' enforcement rights on PHASE-II Technologies and that per the Inducement to Infringe requirements, ORACLE was formally noticed to cease and desist their use of these IP's on no less than three occasions from 2010 onward.
200. Oracle's Financial Systems as just one example, when they create complex time-based triggers from their programming support framework, infringe directly when running those services.
201. The infringement pertains to the time-stamp data structure and how it is created that represents the internal in-database timestamp something that the Oracle Database cannot operate without meaning Oracle cannot operate or resell its products without infringing US6370629.

COUNT 6 - Ebay/Paypal: Infringement of PLAINTIFFS' PHASE-II Technology enforcement rights

202. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-201.

203. PLAINTIFFS attest that both PAYPAL and EBAY were formally noticed to cease and desist their use of these IP's on no less that two separate occasions from 2012 onward.

204. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation, the EBay Time-Centric Secured-Network interface based Auction System; The PayPal ACH and Electronic Payment Interfaces; Both entities transacting BitCoins(tm) Digital Currency and any other infringing systems or sale of materials like Cisco and Juniper equipment.

In re sale of BitCoins - "no method of transacting BitCoins which does not infringe."

205. Like Ebay and Paypal systems as well, all users of BitCoins infringe. There is no possible way to use a BitCoin without Infringing.

206. Likewise there is no way to use Paypal or Ebay without infringing in multiple areas of their operations and practices. For instance the selling of a BitCoin to a third party is both a direct infringement for the Ebay infringements and an inducement to the party buying the BitCoin "to infringe when they use the BitCoin itself". EBay's sale and then expectation of use constitutes inducement to infringe or contributory infringement at the least. PayPal transacting BitCoins (mining) infringes directly and when mined in concert with other systems becomes part of the larger BitCoin framework infringement.

207. Both eBay and Paypal were noticed on their infringements and have continued to infringe ignoring those CEASE AND DESIST demands from 2010 onward.

**COUNT 7 - CISCO/JUNIPER: Infringement of PLAINTIFFS' PHASE-II
Technology enforcement rights**

208. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-207.
209. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '629 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 19 through 32 of the '629 patent, including, by way of example and not limitation, IETF Protocols containing PHASE-II Technologies. Juniper imports and builds systems used in networking for fixed, mobile and handheld electronic computing devices.
210. Both Defendants CISCO and JUNIPER were formally noticed to CEASE AND DESIST the sale of the PLAINTIFFS' Protected IPs inside their Network Infrastructure and Computing Products on several occasions between 2011 and 2014 fulfilling the INDUCEMENT requirements for the complaint against both.
211. Further both Defendants are 'Cornerstones of the IETF' as it were and understand and in fact are partially responsible for the operations of the IETF today, making them directly tied to the IETF's Intellectual Properties Rights practices at an intimate level.
212. As such neither Cisco or Juniper have cause to ship a product with infringing code or technology inside of once noticed of that infringement. Since PLAINTIFFS filed for twenty protocols neither company can deny it is fully aware that they both actively ship infringing implementations of PLAINTIFFS' PHASE-II IP with virtually all their systems today and that their clients cannot use those systems without infringing.

213. Both CISCO and JUNIPER were noticed on their infringements and have continued to infringe ignoring those CEASE AND DESIST demands from 2010 onward.

No Non-infringing uses of these IETF protocols.

214. Cisco and Juniper were both formally noticed that there are no non infringing uses of PLAINTIFFS' PHASE-II Technologies appearing in most all of their products today and that they are both to cease and desist their infringement actions.

COUNT 9 - IETF: Infringement of PLAINTIFFS' PHASE-II Technology enforcement rights, Clayton and Sherman Act Violations

215. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-214.

216. PLAINTIFFS are the sole owner of all rights, title, and interest in the PHASE-II Technologies as protected under the '629 patent, entitled "Controlling Access to Stored Information [with time and location]": duly and properly issued by the U.S. Patent and Trademark Office in April of 2002. This is further codified in the DDI Settlement Agreement as to its intent, that in all instances PLAINTIFFS are the sole owners of PHASE-II Technologies and they and only they license resellers of those technologies. Further that per Title 17 all other parties have a duty to report any jointly owned copyright protected properties under the US Copyright Act's Duty To Account.

217. As the sole publisher of INTERNET NETWORKING STANDARDS on EARTH the IETF's protocols run the entire World today. All nations on the Planet Earth rely on TCP/IP based networking which the IETF is the keeper of the standards for.

218. The problem is many of the IETF Standards published since have been identified "to have PLAINTIFFS' IP INSIDE THEM WITHOUT AUTHORIZATION".

219. These named protocols⁹ have no non-infringing use or possibility of use and as such protocols like BIT TORRENT, which today constitute between 30% and 70% of all Internet Traffic, infringe by design. SecureDNS, NEA, DHCP, NTP and PTP as well as the BGP4 and OpenGeoSpatial Protocols all infringe on claims 19 through 32 of US6370629. Some (in the 20+ protocols already identified which contain Infringing Technology) in one or two functions only but the key ones in so many instances that the PROTOCOLS themselves cannot be used without these infringing components.

220. All of these Standards and permission to reproduce them for DERIVATIVE USE under IETF BCP#78 and IETF BCP#79 the terms and conditions contracts is granted under the IETF Copyright as well. Something PLAINTIFFS assert the IETF has no legal authority to do, that being "allow a third party (one of its partners) to create a version of a patent protected program under their IETF copyright and the assertion that this side-steps the patent protections there in creating a work the IETF controls all rights to as they have for over a decade now with their partner MICROSEMI."

221. As such any one of the Defendants producing a product (software, firmware) compliant to those PROTOCOL STANDARDS "Infringes both in their coding and debug work as a 35 USC 271(a) infringer but also when they sell or import those devices, appliances or programs as a 35 USC 271 (b) or (c) infringer". As such today's Internet stops working without Defendants' continued infringements against US6370629.

⁹ (See Exhibits for Docket 6 OTHER/IETF IP Notice for the first 20 notices sent to IETF on Infringements)

222. Defendants IETF and their MEMBERSHIP as such have to cover this up because it is the operation of an ongoing HORIZONTAL CONSPIRACY¹⁰ violating both Sections One and Two of the Sherman Act.

223. As to how the IETF under a special 'usable for any purpose' copyright publishes detailed cookbook or how-to papers on Network Standards, the IETF operates a SOCIAL MEDIA type standards practice - it uses email and a web based interface as the interaction component between the members and the efforts they are involved in. They also meet three or more times somewhere globally and not attending these meetings can spell death to a standards practice so without significant money to back a standards process it is very unlikely within the IETF that any standards efforts would get off the ground. The average Standards Practice costs the party running it between four and eight million dollars in just employee salary and cost-of-operations for the test-laboratory necessary to build those protocols in a corporate environment.

224. The standards themselves are a COOKBOOK RECIPE for implementing that NETWORK PROTOCOL and contains a full transactional (per the US6370629 Claims) stepwise process which directly infringes the controls in the PLAINTIFF'S US6370629 patent umbrella. IETF Documents detail the protocol interfaces, handshaking and use of the data models; These RECIPES for NETWORKING TOOLS are then reduced to programs from the service interfaces or API's in infringer's equipment by parties like Cisco, Juniper, Apple, Microsoft, Google and Oracle. They are further used in their production by

¹⁰ A conspiracy is an agreement, either express or implied, between two or more parties to accomplish an unlawful objective or to accomplish a lawful objective by unlawful means. *Pearl Brewing Co. v. Anheuser-Busch, Inc.*, 339 F. Supp. 945, 950-951 (S.D. Tex. 1972) (citing *United States v. Kissel*, 218 U.S. 601 (1910); *American Tobacco Co. v. United States*, 328 U.S. 781 (1946); *Standard Oil Co. v. Moore*, 251 F.2d 188 (9th Cir. 1957)).

Defendants EBAY/PAYPAL, NETFLIX, STATE OF CALIFORNIA, USG, and virtually anyone else using TCP/IP Networking for which they designed the workflow handshaking and communications rules as part of their Global Standards Effort.

225. Thus the IETF creates what are Industry Standards in the Internetworking realm. That means anyone using the IETF standard which contain infringing 'claims as process steps' like those which are protected by US6370629 will infringe when this code is "performed" or run.

226. The question is one as to PLAINTIFFS' PERFORMANCE RIGHTS of the patent protected IP in those programs per the limitations of Copyright Section 102 when unauthorized content is included against the wishes of the content owner, as has happened here. As such its republication as a Copyright protected replayable media under the IETF copyright is also a key element of this matter (a standard creates something that is executed in this context, i.e. a network aware program, so the execution of the program is the PERFORMANCE RIGHTS PLAINTIFFS assert they have rights to as well).

227. Finally, PLAINTIFFS assert under Section 102 of the Copyright Act it is an Antitrust action through the Standards Community and Technology Sector to force other adopters to infringe PLAINTIFFS' IPs by implementing compliant systems which contain PLAINTIFFS' IPs.

228. The Antitrust Damage is clearly denial of access to the market based on the IP rights being made functionally impossibly expensive to enforce or rendered unenforceable.

Technical Standards enjoy a special forms Copyright Document - they are NOT literary works and so generate PERFORMANCE RIGHTS from their derivatives naturally.

229. A technical standards document is a recipe, and its steps must be followed exactly to achieve network interoperability. So any Standard which contained IP protected under a

Patent would mandate the use of that IP in any device, program or digital appliance built to comply with that standard.

230. As such the PLAINTIFFS allege in this complaint that the Defendant IETF (through its members) is running Horizontal Conspiracy in the production of Standards with Defendants Cisco, Juniper and others. PLAINTIFFS further assert it is the production of these standards which contain content for which PLAINTIFFS filed no less than twenty (20) formal DO NOT USE statements with the IETF Intellectual Property ("IP") Rights program¹¹.
231. The inclusion of this IP into the Standards and their Licensing from the IETF to its members like Cisco and Juniper which completes this particular Horizontal Conspiracy in those parties' joint program which PLAINTIFFS assert was set up to violate the PLAINTIFFS' Title 35 Protections is an effort to make the IETF's own Copyright Claims supersede PLAINTIFFS' patent protections on content the IETF and its members include in their own Standards publications.

IETF and all users of its IP noticed properly.

232. PLAINTIFFS filed timely notices with IETF through the end of 2009. To date 20 or more IPR (Intellectual Property Rights) statements and CEASE and DESIST demands against the use of the IP with the IETF "constructive notice of Inducement To Infringe" were formally served in compliance with the standards set in *Unisone Strategic IP, Inc. v. Life Techs. Corp.*, No. 3:13-cv-1278-GPC-JMA (S.D. Cal. Oct. 22, 2013).

¹¹ See www.ietf.org/ipr for details on the Intellectual Property Rights flings made for IETF protocols

**A Patent Infringement Fraud in a Standards Group is a
Conspiracy based on the number of parties involved.**

233. PLAINTIFFS' arguments are that "the tying of the Standards Practice which licenses the Defendants to use their Infringing Network Standards" for Apple, Google and all of the other Defendants to implement in their Products globally completes both key aspects of the Conspiracy to Dominate the Market and Prevent PLAINTIFFS Enforcing globally their IP rights. It also forms a Horizontal Conspiracy within the IETF itself and a Hub and Spoke Conspiracy between the IETF and the party implementing its protocol standards which allegedly infringe PLAINTIFFS' Rights.
234. The Spoke companies like Cisco, Juniper, Oracle, Apple, Microsoft, Ebay, Paypal, Netflix, and Google all either build and sell infringing gear, or have systems which provide a service to the public or private users which infringes when those users utilize it. In all instances we found infringements in, those systems have no non-infringing uses for all of the Spoke Companies and their Client base.
235. The ANTITRUST MARKET MANIPULATION comes in based on the size of these markets. The code which infringes will be sold to hundreds of thousands or millions of customers for their daily use globally, and the instant those parties turn those devices on they become ACTIVE DIRECT INFRINGERS.
236. Based on the INDUCEMENT TO INFRINGE from the Defendants those EQUIPMENT AND SOFTWARE PROGRAMS which contain infringing processes or when they are run infringe the PLAINTIFFS' PHASE-II TECHNOLOGY RIGHTS have become ubiquitous in many countries today causing the PLAINTIFFS untold damages.

**ONCE NOTICED IETF PUBLICATION CONSTITUTES AN
INTENTIONAL ACT.**

237. PLAINTIFFS assert that "once notified of an INFRINGEMENT that the IETF may not publish any RIGHT TO USE of those Intellectual Properties until such time as the Licensing on the Infringing Technology is resolved". That it knowingly publishes controlled IP in its Documents if it does so without proper releases proves intent to defraud. Further that with INTENT proven, that their intentional publication of a right to use license under Copyright control creates for the owners of unauthorized content in the publication to be entitled to standing in the copyright protections, and in this instance specifically those PERFORMANCE and ACCOUNTING rights that standard US Copyright protections provide.
238. PLAINTIFFS further allege in this complaint that the IETF chooses to ignore these laws and operates above them by also refusing to put in place DMCA compliance on the US Copyright it publishes all of its global standards under. PLAINTIFFS allege this is another direct act of IP Warfare between "the IETF which is run by the Internet Society and the People of the United States" who they are actively defrauding as such.
239. This then is an attack on American Values and the US Intellectual Property control system by the members of the Internet Society, its managing Board Members and those providing the funding to operate it. As such this constitutes a direct threat against the American way of Life and our commitment to private commerce.
240. **Hub and Spoke Elements:** As to how the Hub portions of the IETF conspiracy like the NEA Submarine Patent work, those technical-protocols are designed by members of the IETF like employees of Cisco or Juniper who in the real-world instance of Cisco NEA ("Network Endpoint Assessment") Protocol Development program withheld the information

it had an already issued patent. That means that Cisco Corporation intentionally started the proposal inside the IETF to create the NEA Working Group to produce the NEA Standard.

241. NEA is an important tool. Cisco was immediately joined by Defendant Juniper and the NEA standards group was chartered and operated. During its operations many documents were created and sometime after the end of the first 18 months of the Working Groups' existence someone in a PATENT SEARCH found a CISCO PATENT ISSUED ALREADY ON THE NEA PROTOCOL ITSELF WHICH WAS FORMALLY WITHHELD FROM THE IETF.
242. As part of its alleged MARKET MANAGEMENT ACTIONS Cisco itself also actively tracked Patents and published the PATENT TROLL TRACKER Website for the members of its IETF inner sanctum.
243. Juniper had full access to the Troll Tracker Website while the program was in active operations. It was functionally shut down in a settlement with John Ward Esq. (son of USDC Judge Ward of the Eastern District of Texas).
244. Mr. Ward's case was heard in Texarkana in civil court and sealed after being settled. We believe that the Troll Tracker Website was a key component in an overall set of actions at the standards community level to influence and manipulate the fate of the world by Silicon Valley High Tech workers.
245. The existence of the PATENT TROLL TRACKER Website documented Cisco's active participation in efforts to track and influence patents used in IETF Internet Standards as well naming PLAINTIFFS and others like USDC Judge Ward's son John as Patent Trolls or

parties in possession of patents then needed to either license or prevent the enforcement of as much as possible.

246. PLAINTIFFS assert as such the existence of this conspiracy is pretty simply demonstrated. PLAINTIFFS further allege that Cisco Corporation and their Employee Rick Frankel Esq, an Intellectual Property Attorney involved in the Cisco IETF Operations, ran the program to track patents which would be used to influence standards through the Website Called the Patent Trolls Site¹² as part of Cisco's internal actions in manipulating the Standards Community fully.

247. As it happens Cisco's NEA is a US6370629 PHASE-II Infringing Protocol and so PLAINTIFFS have it listed as one of the noticed protocols to the IETF which they may not use any of PLAINTIFFS' IP rights inside of.

The Anti-Patent Actions of the IETF Inner Circle Members

248. Additionally PLAINTIFFS allege that several members of the IETF inner circle (mostly from Northern European and Asian Countries) have espoused a philosophy of "the IETF will destroy US Patents and the US Courts' crazy awards in cases like NTP v. RIM." PLAINTIFFS simply point to the proven High-Tech Employment Antitrust matter that the courts are so familiar with and say that our matter is in fact another aspect of "because the IETF members - those same companies - have declared their actions in the Standards Community and in the realm of IP law or Employment Manipulations and the INTERNET are above the Law."

¹² See Patent Trolls litigation Ward v Cisco - Arkansas 4:08-cv-04022-JLH

As just one Example of Antitrust inside the IETF: CISCO's NEA.

249. PLAINTIFFS allege that the IETF is in itself a continuous and ongoing conspiracy between parties to create network standards.
250. That their (IETF's) actions fully meet the terms of a conspiracy when the partners to any Working Group intentionally VOTE TO SEND THEIR PROPOSED STANDARD to the IESG inside the IETF for Ratification because of misrepresentations of legal authority of the parties conveying it to the IETF in each and every document filed before the IETF per the terms of their BCP#78 and BCP#79 Documents.
251. This Process is documented in the IETF participation and contractual frameworks called BCP (Best Current Practices) #78 and #79. The PLAINTIFFS assert that once a Notice of Infringing Protocol is filed with the IETF IPR, any publication of an infringing standard which conveys a RIGHT TO THIRD PARTIES to use PLAINTIFFS' IP in any manner infringes and prevents PLAINTIFFS from exercising the Market Power of the Monopoly the US Government lawfully issued to PLAINTIFFS with the Publication of US6370629.

**IETF's actions to make their TITLE 17 Controls supersede
PLAINTIFFS' TITLE 35 RIGHTS.**

252. The alleged intent is that this would functionally set aside or nullify the PLAINTIFFS' IP protections under Title 35 in favor of the IETF's Title 17 publication rights something Congress clearly never intended for; that this would create dilution and impossibility for enforcements based on net effect of PLAINTIFFS being forced to sue individuals and end-users under the RIAA infringement proceeding models. This type of manipulation of the US Legal Framework is clearly an antitrust action. As such and with other acts inside the IETF, the PLAINTIFFS assert both horizontal and vertical conspiracies are operating herein.

COUNT 9 - US Government: 19 USC 2904 violation; reciprocal nondiscriminatory treatment of International Patent (and IP complaints); FISA abuse, NAFTA violation, Violation of TRIPS and PCT agreements

253. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-252.
254. PLAINTIFFS are the owner of all rights, title, and interest in the PHASE-II Technologies as protected under the '629 patent, entitled "Controlling Access to Stored Information [with time and location]" duly and properly issued by the U.S. Patent and Trademark Office on in April of 2002.
255. The US Government refused (per the second-order requirements of 19 USC 2904) to prosecute¹³ a patent fraud based EEA and Sherman Act complaint filed with the FBI Sacramento office. One sent to SA Manny Alvarez as well as major case intake in Washington DC. The US Government refused to apply the requirements of the NAFTA and TRIPS and PCT agreements based on Congress' Intent therein. PLAINTIFFS assert that the Congressional Intent in the Treaties is that they would be enforced and that it was Congress and not the US Attorney General assuring the foreign nations we (the US) signed those agreements that all actions which were eligible for prosecution under the fraud deterrence program would be to ensure US investors overseas and Foreign investors here in the US and their Intellectual Property protections.
256. Without mandatory prosecutions for patent frauds the US Attorney General and not Congress becomes the Arbiter of the Treaty and the US Performance therein, also something Congress never intended.

(note - that refusal was in violation of 19 USC 2904 to enforce the requirements of the Reciprocal Non-discriminator Treatment of Fraud Complaints which are legitimate in form and warrant prosecution, and other trade related statutes)

257. PLAINTIFFS also assert US Government further interfered with their legal representation and access to the Courts per the 7th Amendment and in doing so has issued a FISA Warrant for PLAINTIFFS' Counsel in this matter based on PLAINTIFF Glassey and certain hacking incidents. That this warrant interferes with PLAINTIFFS' Counsels' ability to represent their client and violates the PLAINTIFFS' rights to access the Courts in an unimpeded manner.

COUNT 10 - California State Government: Lanham Act violation in diluting the Market Power of the Patent Protected and Copyright Protected IP rights of PLAINTIFFS, NAFTA violation, Violation of TRIPS and PCT agreements; Patent Infringement

258. PLAINTIFFS reallege and incorporate by reference the allegations set forth in paragraphs 1-257.

259. The State of California refused to prosecute a dual antitrust and patent fraud complaint filed with the CA AG's office and sent to SAAG Bob Morgester the specific attorney who handled the landmark California State Policy setting Criminal Prosecution in California v Beninsig.

260. Since this patent fraud matter pertains to patents in the US and other nations it brings the Sherman Act Sections One and Two naturally into any fraud complaint pertaining to more than one instance of a patent in any nation as a continuing or recurring act. It also brings the mandatory intent of Congress into regulate the State's refusal to prosecute the matter here.

261. In this matter, like DoJ the State of California refused to apply the same standard it created to prosecute Beninsig (as the implemented policy of the State pertaining to Patent Fraud) to PLAINTIFFS' matter while the State itself was both buying tens of billions of

dollars in infringing Equipment across the State from any number of the named defendants (Cisco, Juniper, Google, Apple, Microsoft, Oracle) and collecting taxation on their sales as a enforcement of a conversion without payment against PLAINTIFFS' rights. These actions constitute 5th Amendment Seizure and Conversion by the State in violation of its own Eminent Domain Act because of the staggering financial debt they would owe PLAINTIFFS if their rights were properly enforceable.

The State as an Intellectual Property Owner creates a dual-standard.

262. Because the State maintains its own portfolio of patents which it licenses to parties the fact it refused to prosecute this patent fraud matter when it continued to both take Tax Revenue from Infringers and prevent PLAINTIFFS' recovery of their property, crossed the line between the State being an uninvolved co-conspirator to a direct participant and beneficiary of the proceeds of this fraud.

263. This is further amplified when political contributions to the campaigns of those State Law Makers and the Governor himself from those parties massively infringing on our patent specifically for 'the prevention of PLAINTIFFS' rights being blocked by the State' or so it is alleged herein.

The Government's (State or Federal both) Actions in refusing to Prosecute CREATE a "Vertical CONSPIRACY" under the Sherman Act.

.

264. PLAINTIFFS further assert when a State or the Federal Government collects tax revenue from infringers and refuses prosecution that the collection of an Income or specifically a

sales tax completes the Conspiracy Chain for the Horizontal Conspiracy under the Sherman Act the PLAINTIFFS allege herein.

265. The collection of any revenue to the State from the proceeds of a criminal action is again another criminal action for the duration that the State continues to so abuse the US Patent system.

266. These claims for the State's subsidizing of the named infringers include the State of California's purchase of infringing systems from Defendants Cisco and Juniper both as well as Software infringing systems from Google, Apple, Microsoft and Oracle as named defendants herein.

267. As such the PLAINTIFFS assert the financial exchange in the form of tax collection completes the Government's standing as a financial benefactor of the fraud itself. And as such further a partner to it when they refuse at the County and State or Federal Level to stop the ongoing criminal concern

Sales Tax revenues collected by California against the unlawful sale of PLAINTIFFS' IP constitute the State's hand in furthering the alleged Conspiracy.

268. The Government's allowing one party to infringe PLAINTIFFS' IP and not prosecute constitutes functional conversion under the Fifth Amendment of PLAINTIFFS' Property without payment. Something neither the US Government or State of California may do under their respective Constitutions and the US Constitution.

DEMAND FOR JURY TRIAL

269. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, PLAINTIFFS

respectfully request a trial by jury of all issues properly triable by jury

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief as follows:

- a. FOR ALL DEFENDANTS (excepting USG and State of California): For a judgment declaring that Defendants have infringed the PLAINTIFFS' IP Enforcement rights for PHASE-II Technologies as protected under the US6370629 family of filings.
- b. For a judgment that MICROSEMI and its partners named violated the Sherman Act Sections One and Two in their Operation of a Continuing Offense against PLAINTIFFS.
- c. For a judgment that MICROSEMI also violated the Clayton Act in its refusal to acknowledge and be bound by the Settlement Agreement as its terms mandate.
- d. For a judgment awarding PLAINTIFFS compensatory damages as a result of Defendants' infringement of the PLAINTIFFS' Patents, together with interest and costs, and in no event less than a reasonable royalty.
- e. For a judgment declaring that Defendants' infringement of PLAINTIFFS' Patents has been willful and deliberate.
- f. For a judgment awarding PLAINTIFFS treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the PLAINTIFFS' PHASE-II Enforcement rights under the US6370629 Patents.
- g. For an Order finding that "Any Patent Protected Intellectual Properties pertaining to Computer Methods [which a Standards Agency such as the IETF included within] a

Standard will automatically entitle the Owners of those rights to Copyright Act protected 'Performance Rights' against the execution of programs which contain the infringing code".

- h. For DEFENDANT USG: an Order to the USPTO to reset the INVENTOR on US6393126 to PLAINTIFF Glassey and PLAINTIFF McNeil; and to properly assign it to them as an unlicensed component of their properties.
- i. Per MICROSEMI and SHERMAN Act Claim 3, an Order from this Court to the IRS fully qualifying and acknowledging the full loss value of the Property sold to the PLAINTIFFS by the US Bankruptcy Court in 01-54207-MM. That being the assets of CERTIFIEDTIME INC. PLAINTIFFS at this time want to take that entire loss as a tax write down with IRS. It is exactly five point two million US Dollars in Claims before the Bankruptcy Estate and the ten thousand in cash to allow the Clerk to complete the processing and pay the Attorneys in the case since the Debtor was broke. PLAINTIFFS seek an Order to IRS qualifying this as a 5.21M USD Loss based on the US District Court's unwillingness to review the Sale Order in any form or to set it aside so that PLAINTIFFS could re-litigate the recovery of their property from MICROSEMI and its agents.
- j. For DEFENDANT USG: For an Order to the US treasury, IRS Division "under the provisions of IRC 165 and the Madoff extensions created in the 2009/09 updates to IRC165 "recognizing the PLAINTIFFS' total loss of enforcement rights to date against US6370629 in all six jurisdictions" and in doing so authorizing a Full-Loss Write-down of all pre-recovery values for the US6370629 instances filed and then abandoned including but not limited to those in Japan, Canada, the EU, South Africa and Brazil at a

fair valuation as determined by this the trial court; PLAINTIFFS will work with the IRS and this the Trial Court to create a tracking and identification model for new and existing infringements as part of this.

- k. For DEFENDANT USG: For an order to the US DoJ terminating any use of FISA or any other action which interferes with a civil attorney's ability to represent their client in any Civil Proceedings whatsoever. Issue a Court Ruling that FISA matters must pertain to a criminal filing and nothing else, and that no NSL may be issued for use in any civil matter in the Courts because of the numbing effect it has on the Bill of Rights, and that parties' access to the Court to ensure Due Process is not denied to PLAINTIFFS under First, Fifth, Seventh and Fourteenth Amendment considerations.

INJUNCTIVE RELIEF REQUESTED¹⁴

- l. And for the US Constitution itself: a ruling that additionally under both Title 17 pursuant to the Performance Rights Argument and Patent Infringement injunctions per Title 35 (35 U.S.C. § 283), a grant of a permanent injunction pursuant to, enjoining the Defendants from further acts of infringement.
- m. For Defendants USG and the State of California: the issuance of an Injunction barring any Government Law Enforcement entity empowered to operate by the US constitution "from refusing to prosecute frauds around [private citizens'] intellectual properties (patents in this case) while both the State [of California] and the US Government continue both to license other patents they hold in their names to the public" and for which both entities continue to purchase infringing equipment, systems and computers

¹⁴ The Injunctive Relief Requested fully meets the four key requirements set See eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 394 (2006); Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24–31 (2008)

from Companies paying them sales taxes on those events. The reason is since they always prosecute frauds against the State of Federal Government themselves, the State and US Governments' *refusal to prosecute* sets a standard of different enforcement entitlement for patents owned by a State or the US Government then in violation of 35 USC as well as the PLAINTIFFS' seventh amendment rights in access to the US Court System.

- n. CLEAN UP the USBK/San Jose Sale of DEBTOR CertifiedTime Inc and all of the properties (especially those in Japan in AMANO's possession) and PLAINTIFFS' losses therein. PLAINTIFFS seek a formal order either recognizing the value of the PLAINTIFFS' loss to the IRS for use in US Tax Accounting for the PLAINTIFFS, and additionally if this court is so inclined, the review of that order finally and the setting the actual sale order aside or ordering it finally enforced.
- o. For a judgment declaring that this case is exceptional and awarding PLAINTIFFS their expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure.
- p. For such other and further relief as the Court deems just and proper.

Respectfully submitted, 11-13-2014

___/s/ Todd Glassey___

Todd S. Glassey, In Pro Se

tglassey@earthlink.net

305 McGaffigan Mill Road

Boulder Creek CA 95006

Telephone: (408) 890-7321

____/s/ Michael McNeil____

Michael E. McNeil, In Pro Se

MEMcNeil@juno.com

PO Box 640

Felton CA 95018-0640

Telephone: (831) 246-0998

EXHIBIT E

Todd S. Glassey, In Pro Se
Todd S. Glassey In Pro Se,
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321
tglassey@earthlink.net

Michael E McNeil In Pro Se
Michael E McNeil In Pro Se
PO Box 640
Felton CA, 95018-0640
831-246-0998
memcneil@juno.com

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

And

MICHAEL E. MCNEIL, In Pro Se
PO Box 640
Felton CA 95018-0640

PLAINTIFFS,

vs.

Microsemi Inc; US Government -
POTUS, the State of California,
Governor Brown, The IETF and
the Internet Society, Apple Inc,
Cisco Inc, eBay Inc. Paypal Inc,
Google Inc, Juniper Networks,
Microsoft Corp, NetFlix Inc,
Oracle Inc, Mark Hastings, Erik
Van Der Kaay, and Thales Group
as UNSERVED DOES

Defendants.

Case No.: 14-CV-3629-WHA

Date: December 26th 2014

Time: 8 AM

Courtroom 8

Judge W.H. Alsup

**RENOTICE OF MOTION AND MOTION
FOR PARTIAL SUMMARY JUDGEMENT
VOIDING DDI (US6370629) SETTLEMENT
AND TTI (US6393126) SETTLEMENT**

**RENOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGEMENT
VOIDING DDI (US6370629) SETTLEMENT AND TTI (US6393126) SETTLEMENT**

1. May it please the Court, to consolidate all Plaintiffs pre-CMC Motions, On December 26th 2014 at 8AM or as soon as may be considered, the Plaintiffs will move the Court for a finding BOTH the TTI Settlement (pertaining to US Patent US6393126) and its carbon copy the DDI Settlement (pertaining to US Patent US6370629) as VOID based on their being missing the key components pertaining to infringement and noticing therein being missing as well as other important components.

2. Be advised this refiling replaces DOCKET 118 and as such is associated with DOCKET 119 and 120; we request Judicial Notice of those matters herein.

3. Plaintiffs believe in the case of the TTI Settlement additional grounds for declaring the Settlement void exist per the Gellman Precedent which supports that there is and was no intent to allow Microsemi to file any patent from the Settlement Rights in the US or Abroad, and as such we ask that the Court additionally take that into consideration in ordering the TTI settlement voided with the DDI settlement. As such a Partial Summary Judgment against Count-1 for the claims as listed is requested.

**Plaintiffs Recovery of the executed contract for the DDI
settlement**

Plaintiffs had a set of settlements extorted from them which the parties who extorted the settlements then made one of the two settlements invalid by

1 withholding it from Plaintiffs and claiming to Defendants named herein that
2 it didnt exist.

3 Finally after 12 and 3/4 years Symmetricom (Microsemi) external lawyer John
4 Burton "refused" we believe to continue to be an active part of the fraud
5 going on and forced his client to turn over the document.

6
7 Today after 13 years Plaintiff's finally have had the DDI Settlement
8 Contract withheld from them by MICROSEMI. In that period Clients allege that
9 Microsemi committed ongoing frauds with its partners. What Plaintiffs seek
10 here is a formal court review on the enforceability of the Settlement
11 Contracts in light of their apparently being Voided based on the standard in
12 Talbot.

13 14 ***Talbot v Quaker State should void both Settlements***

15 Now that Plaintiffs have an executed copy of the DDI Settlement Agreement we
16 need to enforce its terms in providing Plaintiffs third party enforcement
17 rights or have it declared void under the Standard and Precedent set in
18 Shared-Use Patent Contracts by the US Supreme Court in the 1939 TALBOT v
19 QUAKER STATE OIL REFINERY Case.

20 **Filing is Timely**

21 This is a key question which probably should have been filed in this matter
22 first. Further its timely in its filing as the Recovery of the first executed
23 copy of the DDI Settlement document from Microsemi lawyers happened Feb 26th
24 2013. It had been withheld from Plaintiffs and its existence denied by
25 Microsemi Lawyers and Corporate Officers for 12 years previous.

CONCLUSION

Plaintiffs ask the Court declare both Settlements VOID for cause and precedent, ordering that PLAINTIFFS be awarded full custody of both the 629 and 992 patents per the terms of the CO-INVENTOR AGREEMENT.

x // Todd S. Glassey, In Pro Se 10-23-2014
Todd S. Glassey In Pro Se,
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321

x // Michael E McNeil In Pro Se, 10-23-2014
Michael E McNeil In Pro Se
PO Box 640
Felton CA, 95018-0640

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

And

MICHAEL E. MCNEIL, In Pro Se
PO Box 640
Felton CA 95018-0640

PLAINTIFFS,

vs.

Microsemi Inc; US Government - POTUS,
the State of California, Governor Brown,
The IETF and the Internet Society, Apple
Inc, Cisco Inc, eBay Inc. Paypal Inc,
Google Inc, Juniper Networks, Microsoft
Corp, NetFlix Inc, Oracle Inc, Mark
Hastings, Erik Van Der Kaay, and Thales
Group as UNSERVED DOES

Defendants.

Case No. 14-CV-03629-WHA

[PROPOSED] ORDER Granting Plaintiffs
Motion for Partial Summary Judgment
Voiding Settlements

Judge: His Honor, Judge ALSUP
Where: Court Room 8
When: December 26th, 8AM
Date: 9th December 2014

For good cause the motion is hereby granted. The following CONTRACT Settlements
are reviews and found void by this the Trial Court under TALBOT and other related standards.

_____ DDI Settlement pertaining to US6370629 and all of its associated filings

_____ TTI Settlement pertaining to US6393126 and the Trusted Timing Infrastructure

Witness my hand, Judge WH Alsup, _____, Dated _____ 2014

123-2

Exhibit Supporting Dec

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

And

MICHAEL E. MCNEIL, In Pro Se
PO Box 640
Felton CA 95018-0640

PLAINTIFFS,

vs.

Microsemi Inc; US Government - POTUS,
the State of California, Governor Brown,
The IETF and the Internet Society, Apple
Inc, Cisco Inc, eBay Inc. Paypal Inc,
Google Inc, Juniper Networks, Microsoft
Corp, NetFlix Inc, Oracle Inc, Mark
Hastings, Erik Van Der Kaay, and Thales
Group as UNSERVED DOES

Defendants.

Case No. 14-CV-03629-WHA

**SUPPLEMENTAL EVIDENCE -
CONTRACTS FOR DOCKET 118
REVIEW**

Judge: His Honor, Judge ALSUP
Where: Court Room 8
When: December 9th, 8AM
Date: 9th December 2014

I Todd S. Glassey declare under the Penalty of Perjury of the Laws of the United States
Of America the following.

The Attached CO-INVENTOR AGREEMENT is necessary for review of DOCKET 118-
120.

The Attached Copies of the TWO CONTRACTS are the SETTLEMENT
AGREEMENTS to be reviewed for DOCKET118-120 matters. They were not filed with 118 because
they will be used with multiple motions and so are being attached to the 118 matter through this filing
(*DOCKET 121).

/s/ Todd S. Glassey, 11/222014

TODD S. GLASSEY, In Pro Se
305 McGaffigan Mill Road
Boulder Creek, California 95006

123-3

Supplement Rescission related
P&A for if Voiding is denied

Todd S. Glassey In pro Se
 305 McGaffigan Mill Road
 Boulder Creek CA 95006
 408-890-7321
 tglassey@earthlink.net

Michael E. McNeil
 PO Box 640
 Felton CA 95018-0640
 831-246-0998
 memcneil@juno.com

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 (SAN FRANCISCO DIVISION)

TODD S. GLASSEY, In Pro Se)	
305 McGaffigan Mill Road)	Case Number: C3:14-CV-03629-WHA
Boulder Creek, California 95006)	
)	Date: December 19th 2014
And)	Time: 8 AM
)	Courtroom 8
)	Judge W.H. Alsup
MICHAEL E. MCNEIL, In Pro Se)	
PO Box 640)	
Felton CA 95018-0640)	MEMORANDUM OF POINTS AND
)	AUTHORITIES PERTAINING
PLAINTIFFS,)	TO CALIFORNIA STATE CONTRACT
)	RESCISSION STANDARDS AND THE
vs.)	SETTLEMENT AGREEMENTS
)	
Microsemi Inc; US Government -		
POTUS, the State of California,		
Governor Brown, The IETF and the		
Internet Society, Apple Inc, Cisco Inc,		
eBay Inc. Paypal Inc, Google Inc,		
Juniper Networks, Microsoft Corp,		
NetFlix Inc, Oracle Inc, Mark		
Hastings, Erik Van Der Kaay, and		
Thales Group as UNSERVED DOES		
Defendants.		

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Memorandum of Points and Authorities

1. Microsemi's failure to perform cause PLAINTIFFS to notice Microsemi all Settlements were noticed as rescinded under California Rescission Standards including the Assignment Documents with USPTO which were executed under the umbrella of this California Law-framed Contract.

Framing events

2. Over the last 12 years PLAINITFFS have repeated tried to get Microsemi (as Datum, then as Symmetricom, and now as Microsemi) to honor specific terms required by various agreements between the parties. They have in all instances been either Ultra Vires in their actions against Plaintiffs as well as Deceptive in their Practices as evidenced by a number of unauthorized global filings for US6370629 and all of the unauthorized filings for

1 US6393126. As such Plaintiffs formally notified Attorney Peter Chen in 2010 that they wert
2 formally triggering the Arbitration Clause in one last desperate effort to get the contracts
3 terms met and Microsemi refused to participate in that Arbitration at all. In doing so
4 Plaintiffs finally exhausted their possible remedies and rescinded both the Settlement and
5 Interim Assignment Documents per the Below California Law precedent which each of those
6 documents are fully controlled by.

7 **HISTORY: June 2009 Notice**

- 8 3. Microsemi was noticed to stop using any PHASE-II IP outside of the authorized limited uses
9 provided in the Licensing Statements in the TTI Settlement and that they were to stop all uses
10 of DDI technologies outside of Confidential Courier Products entirely.

11
12 **HISTORY: Arbitration and Rescission Notice**

- 13 4. 12 months later in June of 2010 Plaintiffs served Microsemi Attorney Peter Chen of Lathem
14 Watkins LLP in Menlo Park (now his Honor AL Judge Peter Chen of USPTO) that all
15 Settlements were formally rescinded and with the arbitration demand in them PLAINTFFS
16 were invoking that clause, which Microsemi ignored triggering the FINAL SETTLEMENT
17 terms in the failure to perform section.

18
19
20
21 **REMEDY PRECEDENTS**

- 22 5. Remedy Precedents in California provide for direct rescission of th3 assignment documents
23 and any subsidiary documents filed with US Government based on those agreements, and
24 even though no notice of this is necessary it was given to MICROSEMI several times and
25 was ignored in all instances.

Rescission (Nelson v. Sperling, 270 Cal. App. 2d 194, 195, 76 Cal. Rptr. 481, 482 (1969) (failure of consideration for rescinding party's obligation, in a material respect and from any cause, is sufficient basis for unilateral rescission)).

The withholding of the settlement contract for 12 years was grounds for its rescission alone, The unlawful filing of the patents in six foreign nations is additionally grounds for this rescission.

No Notice of Rescission Required (Benson v. Andrews, 138 Cal. App. 2d 123, 136, 292 P.2d 39, 47 (1955) (defendant was not required to give notice of rescission after discovering that plaintiff builder abandoned his construction obligations); see also Russ Lumber & Mill Co. v. Muscupiabe Land & Water Co., 120 Cal. 521, 527, 52 P. 995, 997 (1898)).

Plaintiffs have no obligation to notice anyone other than PTO and they were formally noticed in 2010 and 2011 with complaints filed with the Commissioner of Patents for USPTO.

Plaintiffs rights in rescinding contract returned the Patents to their Control

6. Under California Precedent Plaintiffs noticed Defendants to stop using their IP that the Assignment Documents were void for incomplete and ineffective because they were formally rescinded under California Law Precedent as show below.

7. Plaintiffs had suffered damages warranting rescission based on Microsemi's refusal to turn over the executed copy of the DDI settlement; An act PLAINTIFFS assert was done to prevent this Court from reviewing the enforceability and other actions done by Microsemi as

MEMORANDUM OF POINTS AND AUTHORITIES CALIFORNIA RESCISSION STDS.

1 evidenced in Patent Filing Reports as attached to this Memorandum of Points and
2 Authorities.

Delay in Performance/“Time Is of the Essence”

3
4
5 8. As defined in Holland a mere delay in performing a contract is not a material breach unless the delay
6 is such as to warrant the conclusion that the party does not intend to perform. In this case though the
7 breach is to egregious and so damaging to Plaintiffs rescission was the only course of action since
8 Plaintiffs withheld executed contract from plaintiffs so they could not obtain formal court review of
9 its effectiveness or requirements in ongoing maintenance for the parties therein. This violated the
10 standard set in Hofland v. Gustafson, 132 Cal. App. 2d Supp. 907, 909-10, 282 P.2d 1039, 1041
11 (1955) (eight-day delay in plaintiff’s receipt of insurance proceeds after signing release form was not
12 such a material breach as to give plaintiff right to rescind release).
13

14
15
16 9. Under California Precedent the failures to meet the terms of the Settlement Agreements
17 caused them to be able to be able to be rescinded in form fully. The un-noticed filings in
18 foreign nations, the refusal to fully define what components inside the US6370629 claims
19 were part of 992 and which were part of PHASE-II technologies owned by PLAINTIFFS,
20 and the actions in concert with their Resellers in adding PLAINTIFFS other IP's to products
21 they sell now or have sold off to other entities (Thales Group) fully supports this as well
22
23

PRECEDENT: Willful Failure to Perform

24
25 10. A willful default may be material even though the innocent party suffers no economic loss. Coleman
26 v. Mora, 263 Cal. App. 2d 137, 150, 69 Cal. Rptr. 166, 173 (1968) (owner was justified in rescinding
27 exclusive listing agreement where broker did not produce any prospective buyers and made only
28

MEMORANDUM OF POINTS AND AUTHORITIES CALIFORNIA RESCISSION STDS.

1 nominal efforts to advertise property); Wilson v. Corrugated Kraft Containers, Inc., 117 Cal. App. 2d
2 691, 697, 256 P.2d 1012, 1016 (1953) (fact that seller might have sold its product elsewhere did not
3 diminish the materiality of buyer's failure to purchase its requirements from seller).

4
5 11. The Willful Failure to Perform on the Settlement Contract Terms and its unlawful extortion from
6 Plaintiffs in the first place as an act mandating rescission of the underlying agreement is fully
7 supported.
8

9
10
11 **PRECEDENT: Failure to Execute a Promise**

12 12. That the contracts are missing pieces is key, those components form other parts of the
13 agreement which was breached.
14

15 **The promise that is breached need not be expressly stated in the contract.** Bliss
16 v. California Coop. Producers, 30 Cal. 2d 240, 249, 181 P.2d 369, 374 (1947) (even
17 in absence of express promise and fixed time for performance in contract, court
18 implied promise by corporation to market and process growers' agricultural products
19 and pay insurance premiums for at least ten years where growers had given
20 corporation notes payable in annual installments over ten years as an extension of
21 credit to corporation).
22

23
24 13. PLAINTIFFS were entitled to demand rescission based the scope of the Settlement, how it was
25 obtained, and the breeches of the Settlement itself along the initial acts and certainly for the
26 unauthorized filings of Patents in foreign nations not included in those listed WITH the settlement at
27 the time of its signing, another of the amendments to the contract which disappeared over the years.
28 The supporting grounds are that a party may rescind for partial failure of consideration even if

there has been partial performance by the party against whom the rescission is sought.

Coleman v. Mora, 263 Cal. App. 2d 137, 150-51, 69 Cal. Rptr. 166, 173-74(1968) (principal had right to rescind brokerage agreement after broker had had a reasonable time to perform his obligations and failed to do so).

14. PLAINTIFFS were entitled to demand rescission based on the Coleman v Mora standard in California Courts alone.

For a breach to justify abandonment of the contract, the promise must “go to the root of the contract,” so that a failure to perform it would render the performance of the rest of the contract different in substance from what was contracted.

Walker v. Harbor Bus. Blocks Co., 181 Cal. 773, 780, 186 P. 356, 359 (1919).

15. The breach in this instance is simply total denial of access to PLAINTIFFS IP RIGHTS causing an IRC Fraud Loss of staggering size for the enforcement losses against US6370629 along the Pacific Rim and European as well as South American and US/Canadian Commerce centers those abandoned and rights withheld patents inflicted on PLAINTIFFS.

Plaintiffs Rights are further strengthened by Associated Lathing and Plastering

16. A key California Precedent called Associated Lathing and Plastering is key here. In

Associated we read:

The timing of the breach is relevant in determining the materiality of the breach.

A breach prior to or at the outset of performance may justify rescission when the same breach late in performance would not be significant. When the failure to perform is at the outset, it is helpful to consider whether it would be more just to

MEMORANDUM OF POINTS AND AUTHORITIES CALIFORNIA RESCISSION STDs.

1 free the injured party or to require him to perform his promise, in both cases
2 giving the injured party a right of action if the failure to perform was wrongful.
3 Associated Lathing and Plastering Co. v. Louis C. Dunn, Inc., 135 Cal. App. 2d
4 40, 50, 286 P.2d 825, 830 (1955) (subcontractor materially breached contract by
5 failing to cooperate with general contractor on several occasions, even though
6 dollar amounts involved were relatively minor, because contract provided that
7 time was of the essence, and all indications were that subcontractor's delay and
8 failure to cooperate were going to continue throughout term of contract).

9
10
11 17. In the context of the Rescission Demands, PLAINTIFFS have asserted that the Assignments were
12 formally rescinded under the above and below precedents and they were to stop using the IP. USPTO
13 was also formally noticed of this as well as various frauds pertaining to US6393126 as well as those
14 pertaining to US6370629 the DDI/GMT Controlling Access Patent.

15 ***Microsemi's failure to pay for the foreign Patent Filings is a willful***
16 ***default.***

17
18 18. Per the following standard, Microsemi's willful refusal to pay the publication fee on several
19 of the foreign patents including JAPAN, CANADA, the EU, South Korea, and South Africa
20 on violated the Timely Payment Requirements in the management of the patents. The
21 Payment Demand to Microsemi from the PATENT AGENCIES from those governments
22 named triggered this responsibility per the below precedent
23

24
25 When no time is specified for doing an act, other than paying money, a demand
26 for performance is necessary to put the promisor in default. Johnson v.
27 Alexander, 63 Cal. App. 3d 806, 813, 134 Cal. Rptr. 101, 105 (1976).
28

COMPENSATORY DAMAGE PRECEDENT

19. Plaintiffs are entitled to compensatory damages under the Associated Plaster precedent in California Courts

Compensatory Damages (Associated Lathing and Plastering Co. v. Louis C. Dunn, Inc., 135 Cal. App. 2d 40, 51, 286 P.2d 825, 831 (1955) (where subcontractor failed to perform, general contractor was entitled to damages equal to difference between price for which subcontractor agreed to do lathing and plastering work and reasonable cost of completing job); Hofland v. Gustafson, 132 Cal. App. 2d Supp. 907, 909, 282 P.2d 1039, 1041 (1955) (where the failure of consideration is not material, damages are plaintiff's sole remedy and rescission is not available)).

20. Because of the fraud around the filings and then abandonment of the seven foreign instances of US6370629 and all of the instances of US6393126, PLAINTIFFS are entitled to compensatory damages for each of the patent families, their licensing potential and the damages done to plaintiffs in their unlawful filings.

STATUTE OF LIMITATIONS

21. This matter is timely because DDI contract was just recovered after being withheld for 12 3/4 years. Under California Law Precedent the recovery of the DDI contract in February of 2013 and the USPTO resetting the original filing of US6370629 to CONDITIONALLY FILED per the correction to the Federal Record they published in August of 2013, this matter is timely filed.

1 The statute of limitations is four years for claims based on a written instrument.

2 Cal. Civ. Proc. Code §337(1). For claims based on an oral agreement, the

3 limitations period is two years. Cal. Civ. Proc. Code §339(1).

4
5 /s/ Todd S. Glassey Wednesday, November 19, 2014, Boulder Creek California

6 Witness my hand, Todd S. Glassey,
7 Todd S. Glassey In pro Se
8 305 McGaffigan Mill Road
9 Boulder Creek CA 95006
10 408-890-7321
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123-4

Exhibit DDI Coinventor
agreement

CO-INVENTOR AGREEMENT

This is Co-Inventor Agreement ("Agreement"), is made this 26th day of October, 1988 by and between Todd S. Glassey an individual, and Michael E. McNeil an individual, together herein "Glassey-McNeil", whose mailing address is 109A Bluebonnet Lane, Scotts Valley, CA 95066 and Digital Delivery, Inc., a Massachusetts corporation, having a place of business at 54 Middlesex Turnpike, Bedford, Massachusetts 01730-1417 ("Digital"). This Agreement is made with reference to the facts in the following recitals:

RECITALS

A. Digital is the holder of U.S. Patent Number 5,646,992 for certain data and file protection and encryption technology, described further as encryption and decryption technology employing the use of passwords to control access to stored information on various distribution media. The product produced by Digital under this patent is generally referred to as the Confidential Courier, which is described in non-technical terms as a transmittal envelope which can be opened only by specifically designated persons having the encoded passwords. This patent was issued to Digital on July 8, 1987 (the "Courier Patent").

B. Digital employees Thomas Mark Hastings and Gerald L. Willett, along with Glassey-McNeil have further developed the Courier Patent technology to expand its identification and verification enablement policies by adding the new technology of geo-positioning and time/date encryption with respect to data and file storage and access. It is the intent of Digital to file for a patent on this new technology to the Courier Patent by means of a subsequent patent entitled "Controlling Access to Stored Information" which incorporates the Courier Patent, and is referred to herein as the "Controlling Access Patent".

C. During the course of the development of the technology for the Controlling Access Patent by the parties, it was discussed and agreed in principal that Digital would undertake the submission of the Controlling Access Patent application and that Glassey-McNeil would assign certain rights under the patent with respect to the underlying Courier Patent, provided that certain terms and conditions regarding the mutual rights and exclusive rights to the geo-positioning and time/date encryption policies in the Controlling Access Patent were defined and determined, and that adequate compensation from Digital to Glassey-McNeil was agreed.

D. The purpose of this Agreement is to allow the Controlling Access Patent application to be submitted as early as possible and prior to a definitive agreement between the parties with respect to each party's rights to exploit the Controlling Access Patent, the respective mutual and exclusive rights to the underlying or derivative technology, methodology, or other patentable subject matter contained or referenced in

the Controlling Access Patent, and the compensation to be paid by Digital to Glassey-McNeil for assignment of certain rights therein to Digital.

In consideration of the foregoing facts and recitals, the mutual covenants and undertakings contained therein and herein, the parties agree as follows:

1. PATENT APPLICATION TECHNOLOGY

For purposes of this Agreement, the term:

A. "Confidential Courier" means that technology developed by Digital under the Courier Patent which is embodied in the product produced and sold by Digital under the name Confidential Courier, which contains certain encryption and decryption technology to control and limit access to the information and data contained in specific files.

B. Geo-positioning and time/date technology means the enablement policy which allows data or an event to be pinpointed to occur at a certain time and physical place.

C. GPS Phase II means that geo-positioning and time/date enablement technology invented and developed by Glassey-McNeil that specifically includes a cryptographic signing and verification process with the transmittal of time and geographic positioning information that allows a legally indemnifiable degree of trust to be established in the time and geographic positioning information thus conveyed.

2. AGREEMENT IN PRINCIPLE

The parties are entering this Agreement to set forth certain terms and conditions with respect to the mutual and exclusive rights of each party to the Controlling Access Patent. Although Digital developed, produces and sells the Confidential Courier, which embodies the Courier Patent, there is no prototype nor product yet developed utilizing the new technology of geo-positioning and time/date policies to be patented under the Controlling Access Patent. In view of the uncertainties relative to the cost of developing a product under the Controlling Access Patent and the market potential of such a product, the parties have insufficient information to agree on the compensation to be paid by Digital to Glassey-McNeil for their ideas, inventions, proprietary information and contributions to the Controlling Access Patent.

It is intended that, within one year from the date hereof, a definitive agreement between the parties will be made with respect to this compensation and the mutual and exclusive rights to the Controlling Access Patent. Provided that said compensation can be negotiated by the parties or established by binding arbitration as provided herein, the definitive agreement will include the following terms and conditions:

A. Digital acknowledges that the GPS Phase II technology is solely and exclusively the idea and invention of Glassey-McNeil. Notwithstanding, Digital shall have the rights to utilize the GPS Phase II technology but limited to the Confidential Courier product and product derivatives thereof; and Digital grants to Glassey-McNeil

a perpetual non-exclusive worldwide license for the GPS Phase II technology and derivatives thereof, with rights to sublicense.

B. Glassey-McNeil shall have no rights to any part of the Courier Patent, or to the claims regarding the Courier Patent which are incorporated in the Controlling Access Patent or to the Confidential Courier product now produced by Digital.

C. Digital shall not file any opposition in the United States Patent and Trademark Office or patent offices of any other country, or take any action adverse to the filing of a patent application by Glassey-McNeil for any geo-positioning and time/date technology or technology implementing GPS Phase II, including potential patentable subject matter or products e.g., firewalls, email gateways, protocol bridges, database servers, file servers, hardware based appliances, and the like.

D. Digital shall begin and continue the development of products which shall embody the technology of the Controlling Access Patent in order to enhance or compliment the existing Confidential Courier Product as well as new products exploiting the Controlling Access Patent which are to be sold and distributed by Digital.

E. Glassey-McNeil may develop products which utilize the geo-positioning and/or time/date enablement or GPS Phase II technology, provided that any such products do not include the technology infrastructure covered by the Courier Patent.

Provided that a definitive agreement is negotiated and made by the parties which incorporates the foregoing terms, conditions, covenants, licenses, and compensation to Glassey-McNeil, Glassey-McNeil will execute assignments to Digital with respect to the Controlling Access Patent.

3. FAILURE TO MAKE DEFINITIVE AGREEMENT

A. The parties expressly agree that each of them will negotiate in good faith the terms of a definitive agreement, in light of the provisions in Section 2 above, regarding the patent rights to the Controlling Access Patent and the compensation to be paid by Digital to Glassey-McNeil for the assignment of rights therein as named co-inventors on the Controlling Access Patent application. The parties expressly agree that if they are unable or fail to make a definitive agreement before the anniversary date hereof, then each party shall have all rights as a co-inventor to fully exploit the Controlling Access Patent without accounting or control by the other.

B. If after the one year anniversary hereof, the parties are unable to make a definitive agreement as provided herein, then upon the written request of either party to the other the unresolved issues, terms and conditions will be submitted (i) first to mediation conducted by a qualified mediator, mutually selected by the parties, who has expertise in patent matters and practicable expertise in the commercial encryption industry; and (ii) if mediation does not result in a definitive agreement, then upon written request upon one party to the other, the parties shall submit all unresolved issues to mandatory binding arbitration. The issues will be submitted in writing to the arbitrator,

who shall be mutually selected by the parties, or if the parties are unable to select a single arbitrator, then each party, viz., Digital and Glassey-McNeil shall each select an arbitrator who shall then select a third arbitrator to create an arbitration panel consisting of those three arbitrators. If for any reason the first selected arbitrators cannot agree on a third arbitrator, they may apply to the superior court of Santa Cruz County, California for the name of a qualified neutral third arbitrator. The three arbitrators shall hear all the evidence, and a majority vote of the arbitrators shall make all decisions, determinations and awards in the matters before them.

It is contemplated by the parties that the fundamental issue to be decided by this mandatory arbitration is the amount and structure of the compensation to be paid to Glassey-McNeil for their contribution to the Controlling Access Patent in full respect of the terms set forth in the "AGREEMENT IN PRINCIPLE" in Section 2 hereof. In determining such compensation, the arbitrator(s) shall take into consideration the value of the patent rights to Digital by Glassey-McNeil; the cost of Digital's product development incurred by the parties; the contributions of the parties to Digital's product development; the domestic and international market potential of Digital's new products to be produced under the Controlling Access Patent, including the market potential of the Confidential Courier enhanced by the addition of new features and improvements from the geo-positioning and/or time/date technology in the Controlling Access Patent; the established and potential profitability, commercial success and current or potential popularity of such product(s); the rightful apportionment of profit among the inventors; nonpatented aspects or elements of such product(s), including the costs of manufacturing, business risks.

Any mandatory binding arbitration of matters under this section 3, or consensual arbitration of other matters arising out of this Agreement, shall be conducted by and in accordance with then existing arbitration rules of the American Arbitration Association respecting the computer and electronic commerce industry. Judgment on a binding arbitration award rendered by such arbitrator(s) may be entered in any court having jurisdiction. The parties shall each pay one half of all costs and expenses for the services of any mediator and/or arbitrator(s).

4. DEFAULT IN COMPENSATION

If, after the compensation to be paid by Digital to Glassey-McNeil for their contributions to the technological inventions under the Controlling Access Patent is established by an agreement made by the parties or through a determination from binding arbitration, Digital defaults in the payment terms thereof for any reason, then all rights, i.e. patent, trade secret, etc., to the inventions and technology covered under the Controlling Access Patent, which includes the Confidential Courier, shall revert to Glassey-McNeil as Co-inventors along with Digital. In such event, and each party shall have all right to exploit said inventions and technology without any notice, obligation or accounting to the other. Notwithstanding, the parties shall each execute and deliver such further documents and shall take such other actions as may be reasonably necessary to effect this reversion of rights.

5. NONASSIGNABILITY

The parties hereto have entered into this agreement in contemplation of personal performance hereof by each other and intend that the rights granted and obligations imposed hereunder not be extended to other entities without the other party's express written consent, except that Glassey-McNeil may transfer their interests herein to a corporation whose majority of voting shares are owned and controlled by them. This Agreement shall be binding and shall inure to the benefit of the parties and to their heirs, successors, and assigns.

6. NOTICES

Notices under this Agreement shall be in writing and sent to the parties at the addresses first above written, or to such other addresses as the parties may designate to the other in writing.

7. ATTORNEY FEES

In the event that either party must take legal action, including arbitration, but except for arbitration employed to determine the compensation referenced in Section 3 herein, to enforce or interpret this agreement, or any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney fees and costs as determined by the Court or arbitrator.

8. INTEGRATION

This agreement, any exhibits hereto, set forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them. Neither of the parties shall be bound by any agreements, understandings or representations with respect to such subject matter other than as expressly provided herein or in a subsequent writing signed by the parties hereto.

9. SEVERABILITY


Nothing in this Agreement shall be interpreted or construed as "an agreement to agree" such that this Agreement would be rendered unenforceable. Accordingly, any provision of this Agreement prohibited by, or unlawful or unenforceable, under any applicable law of any jurisdiction, shall be ineffective, without affecting any other provision of this Agreement. To the extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms.

10. LAW

This agreement will be governed and interpreted by the laws and courts of the State of California.

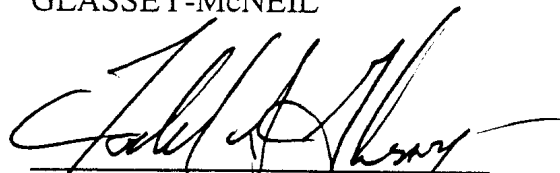
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

DIGITAL DELIVERY


[Signature]

Tomack Hastings President
[Please Print Name/Title]

GLASSEY-McNEIL


TODD S. GLASSEY

Michael E. McNeil
MICHAEL E. McNEIL

123-5

Exhibit Target for Voiding

F

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between DATUM, INC. ("DATUM"), on the one hand, and GLASSEY-MCNEIL TECHNOLOGIES ("GMT"), TODD GLASSEY ("GLASSEY"), and MICHAEL MCNEIL ("MCNEIL"), (sometimes collectively referred to as "GMT/GLASSEY/MCNEIL"), on the other hand.

SECTION ONE

BACKGROUND

1.1 This Agreement is a mutual and complete compromise between the parties and is intended as a complete and final resolution and settlement of the respective differences, positions and claims of DATUM and GMT/GLASSEY/MCNEIL, as described below.

1.2 All parties hereto desire to avoid the risks and expenses attendant upon further litigation and to reach a mutual, full and final compromise and settlement of the parties' disputes, claims, causes of action and the like.

1.3 In or about February 1998 the parties began collaborating on the development of certain technologies related to electronic commerce and time verification, which included the development of certain intellectual property, technologies, trade secrets and confidential and proprietary information. The parties also collaborated on the development of marketing efforts related to electronic commerce and time verification. The parties' collaborative efforts continued through the end of 1998/early 1999.

1.4 From the parties' business relationship a dispute arose between DATUM and GMT/GLASSEY/MCNEIL. Among other things, the parties dispute ownership in and other rights to certain of the intellectual property, technologies, trade secrets and confidential and proprietary information developed or contributed during the parties relationship, including the Protected Technology, defined below. When the parties were unable to resolve the dispute informally, on or around August 20, 1999, DATUM filed a complaint (the "COMPLAINT") stating claims for, among other things, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing,

Misappropriation of Trade Secrets and Proprietary Business Information, Trade Libel, Slander and Declaratory Relief.

SECTION TWO

DEFINITIONS

2.1 Protected Technology: Protected Technology includes any information, data, method, product, software, hardware, trade secrets, copyrights, documents, e-mails, technology, ideas, or inventions, disclosed, provided, produced, created in any form by GMT/GLASSEY/MCNEIL to, for, or in conjunction with DATUM between the initiation of the parties' relationship on February 1, 1998 through March 1, 1999, including any derivatives thereof, and any information, data, method, product, software, hardware, trade secrets, copyrights, documents, e-mails, technology, ideas, or inventions, disclosed, provided, produced, created in any form by DATUM to which GMT/GLASSEY/MCNEIL had, or was provided access to, or gained knowledge of or worked on between February 1, 1998 through March 1, 1999, including all derivatives thereof, including the Trusted Time Infrastructure ("TTI"), TTI II, or any further derivative or variation thereof, including but not limited to the Trusted Local Clocks and Trusted Master Clocks defined below.

2.2 Trusted Local Clocks: The Trusted Local Clock ("TLC") is a particular implementation of a trusted clock that is periodically certified to an upper clock, typically a Trusted Master Clock (TMC). The TLC provides time stamp tokens and temporal tokens. The TLC is a PCIv2.1 compliant card and assumed to be operating in an insecure host in an insecure environment. It uses a real time operating system to control the on-card functions.

2.3 Trusted Master Clocks: The Trusted Master Clock ("TMC") is a particular implementation of a trusted clock, synchronized to Coordinated Universal Time and made comparable to the time offered by a National Time Standard such as the National Institute of Science and Technology, which generates trusted time data which is sent to TLCs for time stamping and other certification purposes. The TMC also monitors and calibrates the TLCs.

2.4 Trusted Time Infrastructure: The term Trusted Time Infrastructure ("TTI") describes

a particular system and process developed by Datum by which time can be affixed to an e-commerce document or transaction, or any other electronically transmitted information, in such a way that it can be free from outside alteration, thus providing a universal, secure and reliable way to ascertain when a transaction occurred or a document was received or sent.

2.5 Net Sales: Net Sales shall mean the amount invoiced for sales of Trusted Local Clocks and Trusted Master Clocks (collectively the "Licensed Products") by DATUM less the following deductions (to the extent they are not already reflected in the amount billed):

- (i) Discounts, refunds, and wholesaler chargebacks allowed and taken in amounts customary in the trade;
- (ii) Import, export, excise, sales or use taxes, tariffs and duties directly imposed and with reference to particular sales;
- (iii) Outbound transportation prepaid or allowed, including insurance.
- (iv) Amounts allowed or credited on rebates, returns or retroactive price deductions.

Licensed Products shall be considered "sold" when the amount billed out or invoiced to a third party has been received by DATUM. Licensed Products shall not be sold for less than commercially reasonable amounts, provided however, DATUM may provide Licensed Products as samples and promotional items in the normal course of business for no charge or reduced charge. If a Licensed Product is incorporated into another product or is sold in combination with other products or services and not invoiced separately, such Licensed Products shall be included in the Net Sales at the then current list price for such quantities of such Licensed Products with any discount from list price being applied proportionately to the discount from list price of the product into which the Licensed Product was incorporated or the list price of the other product sold, as the case may be. If there is then no current list price for such Licensed Product, the Net Sales will be based on the separate value of such Licensed Product and such other products or services.

SECTION THREE
TERMS OF SETTLEMENT

3.1 In consideration of the mutual covenants set forth herein, and in full settlement of the claims and causes of action asserted or held by DATUM and/or GMT/GLASSEY/MCNEIL, the parties agree as follows:

3.2 Royalty:

(a) DATUM agrees to pay to GMT/GLASSEY/MCNEIL a three percent (3%) royalty upon the Net Sales by DATUM of any DATUM Trusted Local Clocks and Trusted Master Clocks. The royalty shall be calculated based upon final sales as of the end of the calendar year in which a royalty may be calculated. The royalty shall be due within sixty (60) days of the end of each year the royalty is due.

(b) The duration of the royalty shall be three (3) years (years 2000, 2001 and 2002).

(c) The royalty shall be subject to a ceiling of \$150,000 per year. Under no circumstances shall DATUM be obligated to pay more than \$150,000 in royalties in any calendar year irrespective of the amount of its Net Sales in any calendar year. GMT/GLASSEY/MCNEIL has no rights to any payment other than the 3% royalty and subject to the ceiling of \$150,000.

(d) DATUM agrees to advance \$50,000 of its royalty payment at the commencement of each year for which a royalty may be paid. The first advance payment shall be made per the wiring instructions below on or before January 7, 2000. Thereafter, the advance shall be paid within the first thirty days of each calendar year per the instructions below. Each of the three (3) \$50,000 advances shall be nonrefundable and shall not be subject to whether DATUM generates sufficient sales to generate the royalty payments but shall be creditable against the royalty earned pursuant to this section. All other royalty payments are subject to DATUM achieving sales of the two (2) products subject of the royalty.

(e) The first advance payment, due on or before January 7, 2000, shall be made by wire transfer to the following account:

(Correct #)
Bank Acc. # —

01-49530-5

Name on Account —

Bosso Williams
attorney Trust
Account.

Bank Routing No. 121139096
Bank Account No. 01-49350-5
Bank Name: Coast Commercial Bank
Bank Address: 720 Front Street
Santa Cruz, California 95060

All further payments shall be by wire transfer to the following account:

Bank Routing No.: 121139096
Bank Account No.: 04-50823-8
Bank Account Name: Glassey-McNeil Technologies
Bank Name: Coast Commercial Bank
Bank Address: 203 Mount Harmon Road
Scotts Valley, CA 95066

(f) Unless notified in a writing signed by GMT, GLASSEY and MCNEIL, and their legal counsel, changing the payees and/or destination of payment, DATUM will follow these instructions for all payments and will not be subject to liability for following such instructions.

3.2.1 Currency of Payments. All payments under this Agreement shall be made U.S. Dollars by wire transfer to such bank account as designated herein. Any payments due hereunder on Net Sales outside of the United States shall be payable in U.S. Dollars at the average of the rate of exchange of the currency of the country in which the Net Sales are made as reported in the New York edition of The Wall Street Journal, for the last three (3) business days of the period for which the royalties are payable.

3.2.2 Tax Withholding. If laws or regulations require the withholding of income taxes owed on account of royalties accruing under this Agreement, such taxes shall be deducted on a country-by-country basis by DATUM from such remittable royalty and will be paid by it to the proper taxing authority. Proof of payment shall be secured and sent to GMT/GLASSEY/MCNEIL as evidence of such payment.

3.2.3 Audit Rights re Royalty Payments: To the extent GMT/GLASSEY/MCNEIL in good faith dispute the amount of royalties to which they are entitled pursuant to this Agreement, GMT/GLASSEY/MCNEIL may request an inspection of DATUM's accounting records reflecting the calculation of Net Sales. Such request may be made once per year while Datum's royalty payment obligations continue under this Agreement. Unless such request is made within thirty (30) days of GMT/GLASSEY/MCNEIL's receipt of a royalty payment from DATUM, the right to audit that payment is waived. The inspection shall be made only by a Certified Public Accountant ("CPA"), subject to DATUM's approval, which will not unreasonably be withheld, and conditioned upon execution of a confidentiality agreement regarding the review of DATUM's records, which shall include, among other things, a provision which prohibits the disclosure by the CPA of any information disclosed, learned or reviewed during the audit to GMT/GLASSEY/MCNEIL except for the final calculation of the amount that the CPA contends DATUM owes under this Agreement. Unless otherwise mutually agreed to in writing, the inspection by the CPA shall take place at the law offices of Stradling, Yocca Carlson & Rauth in Newport Beach, California during normal business hours. No information inspected during the audit may be removed from the premises, other than that which is expressly permitted by this paragraph. For purposes of this audit, the CPA may review only the computer generated accounting records necessary to make a final calculation of royalties owed and shall not be given access to manufacturing documents, inventory records or any underlying invoices and records. GMT/GLASSEY/MCNEIL shall bear all its own costs and expenses incurred to conduct any audits. If the audit determines that an amount is owed by DATUM to GMT/GLASSEY/MCNEIL and that amount is within ten percent (10%) of the original amount paid by DATUM, GMT/GLASSEY/MCNEIL, or if the audit determines that no amount is owed, or if DATUM has overpaid, GMT/GLASSEY/DATUM shall also reimburse DATUM for all of DATUM's cost and expenses in handling any audit. DATUM shall have the right to offset any right to reimbursement under this provision from any future royalty payments.

3.3 Dismissal of Complaint: DATUM agrees to dismiss with prejudice the COMPLAINT within ten (10) days of the full execution of this Agreement.

3.4 Intellectual Property Rights Regarding the Protected Technology:

GMT/GLASSEY/MCNEIL disclaim any ownership in, or rights to, the Protected Technology and hereby acknowledge, represent and warrant that such Protected Technology is owned solely and exclusively by DATUM as its intellectual property, trade secrets and proprietary information. GMT/GLASSEY/MCNEIL agrees not to contest DATUM's ownership of any Protected Technology or the labeling of the Protected Technology as intellectual property, trade secrets, and/or proprietary information.

3.5 Other Agreements Superseded and Terminated: GMT/GLASSEY/MCNEIL further

agree that, with the exception of this Agreement, which supersedes the terms of any prior agreements of the parties, all terms of all other agreements between the parties including, but not limited to any consulting agreements between the parties, any confidentiality or non-disclosure agreements, any value added reseller agreements and any other express, implied or oral agreements are hereby terminated and hereafter void. The parties mutually agree that as between DATUM and GMT/GLASSEY/MCNEIL no provision of any agreement between the parties, other than this Agreement and the settlement agreement relating to the parties' prior co-inventor agreement, shall be deemed to survive.

3.6 Protection of DATUM's Trade Secrets and Proprietary Information: From the execution date of this Agreement and at all times thereafter, GMT/GLASSEY/MCNEIL shall not, and shall not permit any representatives, agents, assigns or affiliates, to use or disclose to any person or entity any Protected Technology. GMT/GLASSEY/MCNEIL expressly agree, represent and acknowledge that they shall not engage in, or be associated with, any business which uses, in any manner, any Protected Technology.

3.7 Availability of Injunctive Relief: Given the nature of DATUM's business, GMT/GLASSEY/MCNEIL's involvement in DATUM's business and in the formulation and implementation of its business plans and strategies relating to the Protected Technology, and GMT/GLASSEY/MCNEIL's direct involvement with DATUM clients, GMT/GLASSEY/MCNEIL acknowledge and agree that the covenants of GMT/GLASSEY/MCNEIL and the restrictions on GMT/GLASSEY/MCNEIL contained in this Agreement are reasonable and necessary in order to protect the legitimate interests of DATUM, and that any violation thereof by

GMT/GLASSEY/MCNEIL or any affiliates would result in irreparable injuries to DATUM, for which damages would not, in and of themselves be an adequate remedy. Therefore, GMT/GLASSEY/MCNEIL acknowledge and agree that, in the event of a violation or breach by GMT/GLASSEY/MCNEIL or any affiliates of any of the covenants or any of the restrictions contained in this Agreement, DATUM shall be entitled to obtain, from any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief, in addition to any other rights or remedies to which DATUM may be entitled under applicable law or equitable principles, without the necessity on the part of DATUM of having to post a bond or other security and without thereby limiting any other rights and remedies, including the recovery of monetary damages, that DATUM may have hereunder or under applicable law by reason of such violation or breach.

3.8 Representation of Non-disclosure: GMT/GLASSEY/MCNEIL represent and warrant that they have not disclosed any Protected Technology to any party other than Datum, its employees, agents, representatives.

3.9 Communication with Datum: GMT/GLASSEY/MCNEIL agree to refrain from any contact or communication with DATUM or any affiliated entities, including any officers, employees, former employees, agents, or representatives of DATUM or its affiliated entities. All communication on behalf of GMT/GLASSEY/MCNEIL which is directed at DATUM, its employees, agents or representatives must be directed to DATUM's legal counsel: John F. Cannon, Esq., Stradling, Yocca, Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, California, 92660-6441. Further, all such communications must be made by legal counsel for GMT/GLASSEY/MCNEIL who is designated as follows: Jason Book, Esq., Bosso, Williams, Sachs, Book, Attack & Gallagher, 133 Mission Street, Suite 280, Santa Cruz, California 95061-1822.

3.10 No Communication Regarding Datum: GMT/GLASSEY/MCNEIL agree that they will not discuss any aspect of DATUM, including but not limited to DATUM's business, officers, employees, former employees, representatives, affiliated entities, transactions, or products with any person or entity, other than as expressly contemplated by this Agreement.

3.11 Release of Claims:

3.11.1 GMT/GLASSEY/MCNEIL's Release of Claims Against DATUM: GMT, GLASSEY and MCNEIL, for themselves and for and on behalf of GMT and any affiliated or related entities, assigns and successors in interest, if any, now or in the future, hereby irrevocably release, forgive and discharge DATUM and all of its current and former officers, directors, shareholders, partners, agents, employees, representatives, affiliates, parent, subsidiaries, and related entities, assigns and successors in interest, if any, now or in the future (collectively, the "DATUM Parties"), from any and all claims, demands, contracts, causes of action, obligations, debts, liabilities of any kind or nature whatsoever, whether known or unknown, which they now have or may have in the future, against the DATUM Parties. This release expressly includes any claims for which DATUM would bear an obligation of indemnity, pursuant to contract statute or otherwise to the person against whom GMT/GLASSEY/MCNEIL would have a claim. This release may be asserted by any of the Datum Parties and shall be a complete defense to any claim for which Datum would bear an indemnity obligation. Notwithstanding the foregoing, DATUM's obligations under this Agreement are expressly excepted from the foregoing release.

3.11.2 DATUM's Release of Claims Against GMT/GLASSEY/MCNEIL: DATUM agrees and acknowledges that DATUM on behalf of itself and any affiliated or related entities, assigns and successors in interest, if any, hereby irrevocably releases, forgives and discharges GMT/GLASSEY/MCNEIL and all of its officers, directors, shareholders, partners, agents, employees, representatives, affiliates, parents, subsidiaries, and related entities, assigns and successors in interest, if any, now or in the future (collectively, the "GMT Parties"), from any and all claims, demands, contracts, causes of action, obligations, debts, liabilities of any kind or nature whatsoever, whether known or unknown, which they now have or may have in the future, including those claims stated in the COMPLAINT, against the GMT Parties. This release expressly includes any claims for which GMT/GLASSEY/MCNEIL would bear an obligation of indemnity because such claim arose during and out of GMT/GLASSEY/MCNEIL's employment of the person against whom DATUM would have a claim. Notwithstanding the foregoing, GMT/GLASSEY/MCNEIL's obligations under this Agreement are expressly excepted from the foregoing release.

3.12 Civil Code Section 1542: With respect to the matters herein stated as the subject of release, the parties hereto do hereby mutually waive and relinquish any and all rights which any of

them may have under the provisions of Section 1542 of the Civil Code of the State of California, which Section reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.13 Settlement of Claims Against DATUM: GMT/GLASSEY/MCNEIL agree and acknowledge that, upon performance of this Agreement, DATUM shall have no further obligations under any consulting agreements, non-disclosure agreements, value added reseller agreements or any other agreement with GMT/GLASSEY/MCNEIL and that GMT/GLASSEY/MCNEIL waive any claims or causes of action any of them may have against DATUM arising out of such agreements, including, but not limited to, claims for damages and claims for the return of any intellectual properties allegedly disclosed to DATUM by GMT/GLASSEY/MCNEIL.

3.14 Attorney's Fees: DATUM and GMT/GLASSEY/MCNEIL shall bear their own costs and attorneys' fees in connection with their respective disputes and claims settled herein.

3.15 Termination of Payment Obligation and Survival of Non-Payment Terms: The parties agree and acknowledge that DATUM's royalty payment obligations terminate after the royalty payment derived from the third year of the royalty. Notwithstanding the foregoing, all other terms of this Agreement will remain in full force and effect after termination of DATUM's payment obligations.

SECTION FOUR

WARRANTIES AND REPRESENTATIONS

4.1 The parties hereto warrant and represent that no promise or inducement has been offered or made for this Agreement except as herein set forth, that this Agreement is executed without reliance on any statements or any representations not contained herein, and that this

Agreement reflects the entire settlement among the parties. The attorneys of record warrant and represent that they are satisfied that their respective clients fully understand the effect, significance and consequence of this Agreement. The terms, acknowledgments, warranties and representations made herein shall survive the execution and delivery of this Agreement, and shall be binding upon the respective heirs, representatives, and assigns and successors of each of the parties and their attorneys.

SECTION FIVE

NO ADMISSION OF LIABILITY

5.1 The parties hereto acknowledge and agree that this Agreement is entered into as a mutual compromise and settlement which is not in any respect or for any purpose to be deemed or construed as an admission or concession of any liability whatsoever on the part of any of the parties hereto.

SECTION SIX

CONFIDENTIALITY

6.1 The parties agree that this Agreement and its terms are confidential. The parties further agree that the confidentiality of this Agreement and its terms is a material term of this Agreement without which the parties would not have consented to the Agreement. The parties expressly agree that they will not disclose or discuss the terms of this Agreement with any person. GMT/GLASSEY/MCNEIL shall notify DATUM's legal counsel, in writing, of the receipt of any request for the disclosure of any confidential information. GMT/GLASSEY/MCNEIL shall cooperate with the efforts of DATUM to quash such subpoena or other legal process or to obtain a protective order, as DATUM deems appropriate. The parties shall have the right to provide required information concerning this Agreement to investors and potential investors, and to Affiliates in order to enable them to carry out the activities contemplated hereunder and in connection with strategic business needs. Any such disclosure shall be pursuant to a separate agreement of confidentiality between DATUM or GMT/GLASSEY/MCNEIL and any such third parties.

6.2 The parties further agree to maintain the confidentiality of any document or information which has been or is designated as confidential, including Protected Technology.

SECTION SEVEN

ENFORCEMENT OF AGREEMENT

7.1 If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation arising out of or relating to any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

SECTION EIGHT
MISCELLANEOUS

8.1 This Agreement is subject to, governed by, and shall be construed in accordance with the laws of the State of California.

8.2 GMT/ GLASSEY/MCNEIL represent and warrant that they are the sole and rightful owners of the claims asserted in the dispute described in this Agreement and that any such claims have not been assigned or transferred to any unnamed party. DATUM represents and warrants that it is the sole and rightful owner of the claims asserted in the COMPLAINT and otherwise herein and that any such claims have not been assigned or transferred to any unnamed party.

8.3 This Agreement is enforceable and binding upon the parties hereto, their successors and assigns, and any agents or others under the control or direction of the parties. Moreover, both parties, as well as the signatories, hereby warrant and covenant that their respective representative signing this Agreement has full authority to bind the parties to the terms of this Agreement.

8.4 The parties may assign all rights and delegate all duties hereunder to an entity acquiring that portion of each parties' business to which this Agreement relates, or to any corporate successor by way of merger or consolidation, provided that the assignee delivers to DATUM or GMT/GLASSEY/MCNEIL, as appropriate, a statement that the assignee assumes the assigning party's obligations hereunder. GMT/GLASSEY/MCNEIL may assign its right to receive the royalty payments provided in paragraph 3.2 to any person or entity provided that DATUM receives notice in writing of such assignment signed by GMT, GLASSEY and MCNEIL.

8.5 This Agreement constitutes and contains the entire understanding and agreement of the parties and cancels and supersedes any and all prior negotiations, correspondence and understandings and agreements, whether verbal or written, between the parties respecting the subject matter hereof. No waiver, modification or amendment of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each of the parties.

8.6 The provisions of this Agreement are severable, and if one or more provisions should be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. The provisions of this Agreement shall be construed as separate provisions covering their subject matter in each of the separate counties and states in the United States in which DATUM transacts its business; to the extent that any provision shall be judicially unenforceable in any one or more of those counties or states, that provision shall not be affected with respect to each other county or state, each provision with respect to each county and state being construed as severable and independent.

8.7 The parties agree to take any acts, and execute any further documents, that may be reasonably necessary to accomplish and effect the terms of this Agreement.

8.8 This Agreement may be executed in counterparts and by fax, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the dates below indicated.

Dated: November 14, 1999


TODD GLASSEY

Dated: November 19, 1999


MICHAEL MCNEIL

Dated: November 17, 1999


GLASSEY MCNEIL TECHNOLOGIES

Dated: November __, 1999

DATUM, INC.

APPROVED AS TO FORM AND CONTENT:

8.6 The provisions of this Agreement are severable, and if one or more provisions should be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. The provisions of this Agreement shall be construed as separate provisions covering their subject matter in each of the separate counties and states in the United States in which DATUM transacts its business; to the extent that any provision shall be judicially unenforceable in any one or more of those counties or states, that provision shall not be affected with respect to each other county or state, each provision with respect to each county and state being construed as severable and independent.

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Dated: November 14, 1999


TODD GLASSEY

Dated: November 19, 1999


MICHAEL MCNEIL

Dated: November 17, 1999


GLASSEY MCNEIL TECHNOLOGIES

Dated: November 29, 1999

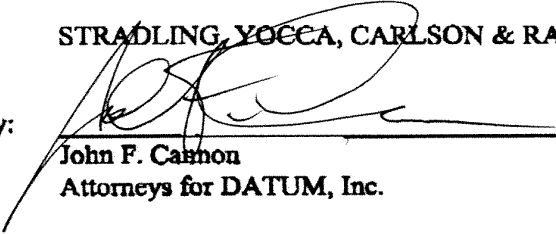

DATUM, INC.

APPROVED AS TO FORM AND CONTENT:

Dated: November ____, 1999

By:

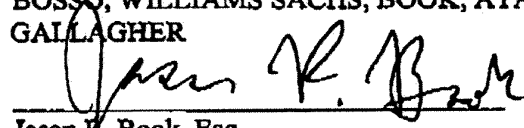
STRADLING, YOCCA, CARLSON & RAUTH


John F. Cannon
Attorneys for DATUM, Inc.

Dated: November 9, 1999

By:

BOSSO, WILLIAMS SACHS, BOOK, ATACK &
GALLAGHER


Jason K. Book, Esq.
Attorneys for Glassey-McNeil Technologies, Inc.
Todd Glassey, and Michael McNeil.

123-6

Exhibit Target for Voiding

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between DATUM, INC. ("DATUM") and DIGITAL DELIVERY INC. ("DDI"), on the one hand, and GLASSEY-MCNEIL TECHNOLOGIES ("GMT"), TODD GLASSEY ("GLASSEY") and MICHAEL E. MCNEIL ("MCNEIL") (collectively referred to as "GMT/GLASSEY/ MCNEIL"), on the other hand.

SECTION ONE

BACKGROUND

1.1 GLASSEY and MCNEIL and DDI entered into a Co-Inventor Agreement, dated October 26, 1998 (the "Co-Inventor Agreement"), pursuant to which those parties agreed, on an interim basis, to certain rights and interests in intellectual property and to certain future payment obligations of DDI, pending the execution of a definitive agreement with respect to such intellectual property.

1.2 On or about July 29, 1999, DATUM consummated a merger whereby DDI became a wholly owned subsidiary of DATUM.

1.3 On or about August 20, 1999, DATUM filed a complaint (the "COMPLAINT") stating claims against GMT/GLASSEY/MCNEIL for, among other things, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Misappropriation of Trade Secrets and Proprietary Business Information, Trade Libel, Slander and Declaratory Relief.

1.4 DATUM, DDI and GMT/GLASSEY/MCNEIL desire to definitively resolve and terminate the interim arrangements arising from the Co-Inventor Agreement, to avoid the risks and expenses attendant upon litigation and to reach a mutual, full and final compromise and settlement of the parties' matters, claims, causes of action and the like with respect the Co-Inventor Agreement, the Assembly, Distribution and Use of Digital Information Patent, the Controlling Access Patent and the Phase II Technology (as defined below).

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1.5 This Settlement Agreement is a mutual and complete compromise between the parties and is intended as a complete and final resolution and settlement of the respective differences, positions and claims of DDI, DATUM and GMT/GLASSEY/MCNEIL, with respect the Co-Inventor Agreement, the Assembly, Distribution and Use of Digital Information Patent, the Controlling Access Patent and the Phase II Technology.

SECTION TWO

DEFINITIONS

2.1 The Assembly, Distribution and Use of Digital Information Patent: U.S. Patent No. 5,646,992 issued to DDI on July 8, 1997 for certain data and file protection and encryption technology. One of the products produced under this patent is called the Confidential Courier, which is described as an electronic transmittal envelope which can be opened only by specifically designated persons having the encoded passwords.

2.2 Controlling Access Patent: A US and certain foreign countries patent pending covering the expansion of technology covered by the Assembly, Distribution and Use of Digital Information Patent to include the new technology of geo-positioning and time/data encryption with respect to digital data and file assembly, distribution, use and access.

2.3 Phase II Technology - Phase II Technology refers to the method of authentication, encryption and transmission of date/time and/or location data for the purpose of linking together two or more disparate electronic components, such that a trust model is established between them. Such physical elements must individually be capable of computational and cryptographic functionality, but computationally may be isolated from one another. Such electronic components must be physically secure, and communicate with each other over communications channel(s) which may themselves be insecure.

SECTION THREE
TERMS OF SETTLEMENT

3.1 In consideration of the mutual covenants set forth herein, and in full settlement of the claims and causes of action asserted or held by DDI and/or GMT/GLASSEY/MCNEIL under the Co-Inventor Agreement, the parties agree as follows:

3.2 Assignment of Controlling Access Patent: GMT/GLASSEY/MCNEIL assign all rights, title and interest in the Controlling Access Patent and the application therefor, to DATUM.

3.3 Ownership of and License to Use Phase II Technology: DDI and DATUM acknowledges that GMT/GLASSEY/MCNEIL owns all rights, title and interest in the Phase II Technology, but GMT/GLASSEY/MCNEIL hereby grants DATUM a perpetual, non-exclusive, irrevocable, assignable, sub-licensable, worldwide license for use of the Phase II Technology and derivatives thereof, with rights to sublicense, in connection with the Confidential Courier product and other products and technology covered by the Controlling Access Patent.

3.4 Payment: DATUM will pay to GMT/GLASSEY/MCNEIL \$300,000 upon full execution of this Agreement. Payment shall be wired within 24 hours of execution as follows:

Bank Routing No. 121139096

Bank Account No. 01-49350-5

Bank Name: Coast Commercial Bank

Bank Address: 720 Front Street
Santa Cruz, California 95060

3.5 Dismissal of Complaint: DATUM agrees to dismiss with prejudice the COMPLAINT within ten (10) days of the full execution of this Agreement

3.6 Acknowledgment of Rights Under the Assembly, Distribution and Use of Digital Information Patent GMT/GLASSEY/MCNEIL disclaim and waive any rights to the Assembly,

Distribution and Use of Digital Information Patent and the technology described therein and agree not to make, use or sell any products developed using or derived from the Phase II Technology which also include the technology described in or covered by the Assembly, Distribution and Use of Digital Information Patent. GMT/GLASSEY/MCNEIL explicitly acknowledge that they had no participation in the invention or patent application process which resulted in the U.S. Patent No. 5,646,992 issued to DDI on July 8, 1997.

3.7 Co-Inventor Agreement Terminated. In addition and without duplication, upon the execution of this Agreement and payment of the amount specified in paragraph 3.4, above the Co-Inventor Agreement shall be terminated, and this Agreement shall be the only agreement of the parties with respect to the subject matter of the Co-Inventor Agreement and this Agreement. Such subject matter includes without limitation the future payment obligations and division of intellectual property rights set forth in the Co-Inventor Agreement. The parties hereto acknowledge and agree that the settlement payment constitutes the satisfaction in full of any claims by GMT/GLASSEY/MCNEIL for compensation of any kind pursuant to the Co-Inventor Agreement.

3.8 Availability of Injunctive Relief: GMT/GLASSEY/MCNEIL acknowledge and agree that the covenants of GMT/GLASSEY/MCNEIL and the restrictions on GMT/GLASSEY/MCNEIL contained in this Agreement are reasonable and necessary in order to protect the legitimate interests of DATUM, and that any violation thereof by GMT/GLASSEY/MCNEIL or any affiliates would result in irreparable injuries to DATUM, for which damages would not, in and of themselves, be an adequate remedy. Therefore, GMT/GLASSEY/MCNEIL acknowledge and agree that, in the event of a violation or breach by GMT/GLASSEY/MCNEIL or any affiliates of any of the covenants or any of the restrictions contained in this Agreement, DATUM shall be entitled to obtain, from any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief, in addition to any other rights or remedies to which DATUM may be entitled under applicable law or equitable principles, without the necessity on the part of DATUM of having to post a bond or other security and without thereby limiting any other rights and remedies, including the recovery of monetary damages, that DATUM may have hereunder or under applicable law by reason of such violation or breach.

3.9 Release of Claims:

3.9.1 GMT/GLASSEY/MCNEIL's Release of Claims Against DATUM and DDI
GMT, GLASSEY and MCNEIL, for themselves and for themselves and for and on behalf of GMT and any affiliates, related entities, assigns and successors in interest, if any, now or in the future, hereby irrevocably release, forgive and discharge DATUM and DDI and all of their officers, directors, shareholders, partners, agents, employees, representatives, affiliates, parent, subsidiaries, and related entities, assigns and successors in interest, if any, now or in the future (collectively, the "Datum Parties"), from any and all obligations, responsibilities and liabilities relating to or arising out of the Co-Inventor Agreement against the Datum Parties. Notwithstanding the foregoing, DATUM's obligations under this Agreement are expressly excepted from the foregoing release.

3.9.2 DATUM's and DDI's Release of Claims Against GMT/GLASSEY/MCNEIL: DATUM and DDI agree and acknowledge for themselves and for themselves and for and on behalf of DATUM and any affiliates, related entities, assigns and successors in interest, if any, now or in the future, that GMT/GLASSEY/MCNEIL are released and fully discharged from any and all obligations, responsibilities and liabilities to DATUM or DDI relating to or arising out of the Co-Inventor Agreement. Notwithstanding the foregoing, GMT/GLASSEY/MCNEIL's obligations under this Agreement are expressly excepted from the foregoing release.

3.9 Civil Code Section 1542: With respect to the matters herein stated as the subject of release, the parties hereto do hereby mutually waive and relinquish any and all rights which any of them may have under the provisions of Section 1542 of the Civil Code of the State of California, which Section reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.10 Attorney's Fees: DATUM, DDI and GMT/GLASSEY/MCNEIL shall bear their own costs and attorneys' fees in connection with their respective disputes and claims settled herein.

SECTION FOUR
WARRANTIES AND REPRESENTATIONS

4.1 The parties hereto warrant and represent that no promise or inducement has been offered or made for this Agreement except as herein set forth, that this Agreement is executed without reliance on any statements or any representations not contained herein, and that this Agreement reflects the entire settlement among the parties. The attorneys of record warrant and represent that they are satisfied that their respective clients fully understand the effect, significance and consequence of this Agreement. The terms, acknowledgments, warranties and representations made herein shall survive the execution and delivery of this Agreement, and shall be binding upon the respective heirs, representatives, and assigns and successors of each of the parties and their attorneys.

SECTION FIVE
NO ADMISSION OF LIABILITY

5.1 The parties hereto acknowledge and agree that this Agreement is entered into as a mutual compromise and settlement which is not in any respect or for any purpose to be deemed or construed as an admission or concession of any liability whatsoever on the part of any of the parties hereto.

SECTION SIX
CONFIDENTIALITY

6.1 The parties agree that this Agreement and its terms are confidential. The parties further agree that the confidentiality of this Agreement and its terms is a material term of this Agreement without which the parties would not have consented to the Agreement. The parties expressly agree that they will not disclose or discuss the terms of this Agreement with any person. GMT/GLASSEY/MCNEIL shall notify DATUM's legal counsel, in writing, of the receipt of any request for the disclosure of any confidential information. GMT/GLASSEY/MCNEIL shall cooperate with the efforts of DATUM to quash such subpoena or other legal process or to obtain a protective order, as DATUM deems appropriate. The parties shall have the right to provide required information concerning this Agreement to investors and potential investors, and to Affiliates in order to enable them to carry out the activities contemplated hereunder and in connection with strategic business needs. Any such disclosure shall be pursuant to a separate agreement of confidentiality between DATUM or GMT/GLASSEY/MCNEIL and any such third parties.

6.2 The parties further agree to maintain the confidentiality of any document or information which has been or is designated as confidential.

SECTION SEVEN
ENFORCEMENT OF AGREEMENT

7.1 If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation arising out of or relating to any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

SECTION EIGHT
MISCELLANEOUS

8.1 This Agreement is subject to, governed by, and shall be construed in accordance with the laws of the State of California.

8.2 GMT/ GLASSEY/MCNEIL represent and warrant that they are the sole and rightful owners of the claims asserted in the dispute described in this Agreement and that any such claims have not been assigned or transferred to any unnamed party. DATUM and DDI represent and warrant that DATUM is the sole and rightful owner of the claims asserted in the COMPLAINT and otherwise herein and that any such claims have not been assigned or transferred to any unnamed party.

8.3 This Agreement is enforceable and binding upon the parties hereto, their successors and assigns, and any agents or others under the control or direction of the parties. Moreover, both parties, as well as the signatories, hereby warrant and covenant that their respective representative signing this Agreement has full authority to bind the parties to the terms of this Agreement.

8.4 The parties may assign all rights and delegate all duties hereunder to an entity acquiring that portion of each parties' business to which this Agreement relates, or to any corporate successor by way of merger or consolidation, provided that the assignee delivers to DATUM or GMT/GLASSEY/MCNEIL, as appropriate, a statement that the assignee assumes the assigning party's obligations hereunder.

8.5 This Agreement constitutes and contains the entire understanding and agreement of the parties and cancels and supersedes any and all prior negotiations, correspondence and understandings and agreements, whether verbal or written, between the parties respecting the subject matter hereof. No waiver, modification or amendment of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each of the parties.

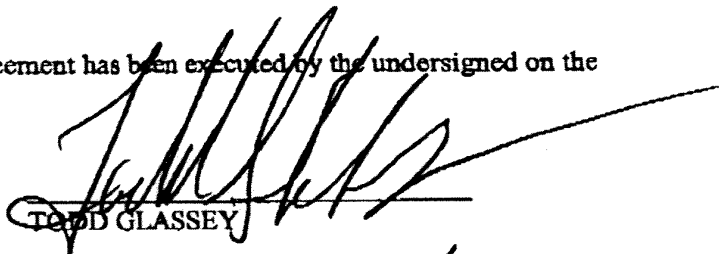
8.6 The provisions of this Agreement are severable, and if one or more provisions should be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. The provisions of this Agreement shall be construed as separate provisions covering their subject matter in each of the separate counties and states in the United States in which DATUM transacts its business; to the extent that any provision shall be judicially unenforceable in any one or more of those counties or states, that provision shall not be affected with respect to each other county or state, each provision with respect to each county and state being construed as severable and independent.

8.7 The parties agree to take any acts, and execute any further documents, that may be reasonably necessary to accomplish and effect the terms of this Agreement.

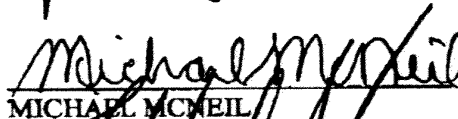
8.8 This Agreement may be executed in counterparts and by fax, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the dates below indicated.

Dated: November 19, 1999


TODD GLASSEY

Dated: November 19, 1999


MICHAEL MCNEIL

Dated: November 19, 1999


GLASSEY MCNEIL TECHNOLOGIES

Dated: November __, 1999

DATUM, INC.

Dated: November __, 1999

DIGITAL DELIVERY, INC.

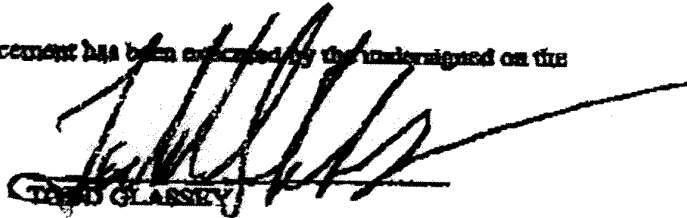
8.6 The provisions of this Agreement are severable, and if one or more provisions should be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. The provisions of this Agreement shall be construed as separate provisions covering their subject matter in each of the separate counties and states in the United States in which DATUM transacts its business; to the extent that any provision shall be judicially unenforceable in any one or more of those counties or states, that provision shall not be affected with respect to each other county or state, each provision with respect to each county and state being construed as severable and independent.

8.7 The parties agree to take any acts, and execute any further documents, that may be reasonably necessary to accomplish and effect the terms of this Agreement.

8.8 This Agreement may be executed in counterparts and by fax, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the dates below indicated.

Dated: November 11, 1999


THOMAS GLASSEY

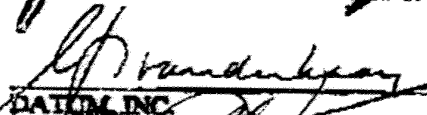
Dated: November 19, 1999


MICHAEL MCNEIL

Dated: November 19, 1999


GLASSEY MCNEIL TECHNOLOGIES

Dated: November 29, 1999


DATUM, INC.

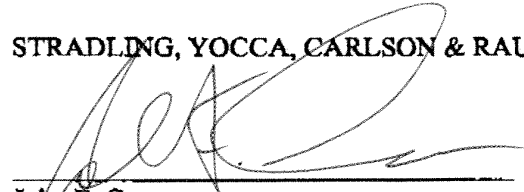
Dated: November 29, 1999


DIGITAL DELIVERY, INC.

APPROVED AS TO FORM AND CONTENT:

STRADLING, YOCCA, CARLSON & RAUTH

Dated: November __, 1999 By:


John F. Cannon
Attorneys for DATUM, Inc. and Digital Delivery Inc.

BOSSO, WILLIAMS SACHS, BOOK, ATACK &
GALLAGHER

Dated: November 19, 1999 By:

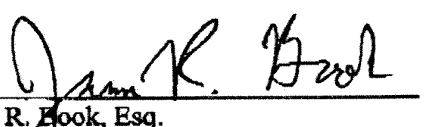

Jason R. Book, Esq.
Attorneys for Glassey-McNeil Technologies, Inc.
Todd Glassey, and Michael McNeil.

EXHIBIT F

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

TODD S. GLASSEY and MICHAEL E. MCNEIL,

Plaintiffs,

No. C 14-03629 WHA

v.

MICROSEMI INC, US GOVERNMENT,
PRESIDENT OF THE UNITED STATES,
STATE OF CALIFORNIA, GOVERNOR BROWN,
THE IETF AND THE INTERNET SOCIETY,
APPLE INC., CISCO INC., EBAY INC.,
PAYPAL INC., GOOGLE INC.,
JUNIPER NETWORKS, MICROSOFT CORP.,
NETFLIX INC., ORACLE INC., MARK HASTINGS,
ERIK VAN DER KAAY, AND THALES GROUP,
and "UNSERVED" DOES,


Defendants.

ORDER TO SHOW CAUSE

By **DECEMBER 19 AT NOON**, plaintiffs shall file a joint brief showing cause why the second amended complaint should not be stricken. Plaintiffs' submission shall not exceed fifteen pages. Failure to timely respond may result in dismissal with prejudice and entry of judgment against plaintiffs. By **DECEMBER 19 AT NOON**, all defendants who have appeared, save for the United States, shall file a joint brief showing cause why the second amended complaint should be stricken. Defendants' brief shall not exceed fifteen pages. By **DECEMBER 19 AT NOON**, the United States shall file a brief showing cause why the second amended complaint should be stricken. The government's brief shall not exceed five pages.

IT IS SO ORDERED.

Dated: December 11, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT G

Todd S. Glassey, In Pro Se
Todd S. Glassey In Pro Se,
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321
tglassey@earthlink.net

Michael E. McNeil, In Pro Se
Michael E. McNeil In Pro Se,
PO Box 640
Felton, CA 95018-0640
831-246-0998
memcneil@juno.com

UNITED STATES DISTRICT COURT
San Francisco Division

Todd S. Glassey In Pro Se and
Michael E. McNeil In Pro Se,

Plaintiffs,

vs.

Microsemi, et Al.,

Defendants

Case No.: 3:14-CV-03629-WHA

**PLAINTIFFS' BRIEF RESPONSE in re ORDER
TO SHOW CAUSE**

Judge: W.H. Alsup
Where: Electronically filed by
When: Dec. 19th 2014, 8:00AM

**PLAINTIFFS' BRIEF RESPONSE in re ORDER TO SHOW
CAUSE**

1. Plaintiffs file the following Brief in response to his Honor's Order to Show Cause. The Brief cites both statute and local history and precedent to substantiate that Plaintiffs' Claims are easily identified; the Brief supports the Plaintiffs' allegations while any further necessary explanations can be delivered through verbal

1 testimony should the court feel the need for more clarification on the
2 complaint or the allegations therein.

3		
4	PLAINTIFFS' BRIEF RESPONSE in re ORDER TO SHOW CAUSE.....	1
5	Summary Retort to claims of insufficiency.....	3
6	The Second Amended Complaint Counts 1-8 properly charges Patent Infringement	
7	and Antitrust	3
8	Patent Infringement Charges	4
9	Antitrust Charges	4
10	The SAC properly alleges US Government Interference with Plaintiffs'	
11	Access to the Courts, conversion of their Property and Fraud before the	
12	WTO.	5
13	No Oversight for discovering whether IEEPA was used in this matter based on	
14	Congress's writing of the IEEPA itself and as such it may be	
15	unconstitutional in form.....	5
16	The SAC properly notices the Importance of technologies based on	
17	infringements of US6370629's PHASE-II Controls one or more stages in all	
18	aspects of Digital Government and Electronic Commerce today.	6
19	Modular Structure of Counts in the SAC.....	7
20	The SAC's Count 1 and Counts 2-8 - Properly Allege Patent Infringement under	
21	35 USC 271	7
22	The SAC Count 8 properly charges the IETF with Sherman Act and Clayton Act	
23	violations tied to Patent Infringement of US6370629's Phase-II IPs	8
24	Plaintiffs Have Standing.....	9
25	Plaintiffs have standing as the original Creator's of PHASE-II Intellectual	
	Properties the US6370629 Filing is based on	10
	The US Government may not like it but the Plaintiffs' Losses are real	
	whether classified or not	10
	Count-1 Infringement, Tortuous Interference, and Antitrust Violations	
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Summary Retort to claims of insufficiency

2. The SAC although clearly written by inexperienced PRO SE litigants is proper and meets the minimum litmus test for direct charging of the Patent Infringement Claims against US6370629 (and US6393126) as well as the Antitrust claims under the Sherman and Clayton acts against Microsemi, IETF, Cisco, and those parties involved in the unlicensed resale of Plaintiffs' IPs globally.

The Second Amended Complaint Counts 1-8 properly charges Patent Infringement and Antitrust

3. Patent Infringement charged before the Ninth Circuit (as supported by the Court of Claims and rulings out of the DC Circuit) is done by specifying the patent, the claims infringed, and the allegation of the systems, the statement for notice of the infringement, the relief demand and the following complaint; as such it meets both requirements from **Bell Atlantic v. Twombly (2007)** and **Ashcroft v. Iqbal (2009)**. In addition specific frauds are alleged properly against Microsemi in Count-1 meeting the specificity hurdle for FRCP 9(b) as well.

4. Direct analysis of those systems "to make a factual determination of the infringements against the use of PHASE-II IPs" is left to the Trial

1 and Trier of Fact and is done after the initial complaint filing
2 generally.

3 **Patent Infringement Charges**

4 5. The SAC properly charges patent infringement against all of the named
5 defendants under 35 USC 271 (a) for their use of equipment and programs
6 containing those infringing PHASE-II Intellectual Properties for the
7 Defendants' corporate operations, as well as the subsidiary
8 inducement/importation claims under 35 USC 271 (b) and (c) for their
9 "Commercial Importation of systems with firmware and programs which
10 infringe when executed and the sale of those components to third
11 parties for their independent use" or like Web Based or Cloud Services,
12 the use of the PHASE-II services offered from within the Defendants
13 programs which create their User Experience for those third parties who
14 become a party to the infringements in the server with like
15 infringements on the client when those programs are run.

16 6. Those systems are named as Hardware Infrastructure and Networking
17 Systems as well as Server Platform and Client Platform programs.

18 **Antitrust Charges**

19 7. While imperfect in that it doesn't attempt at this time to Qualify
20 several Classes in this matter for the Antitrust Aspects and Induced
21 Infringer class, the Second Amended Complaint is functional as an
22 Antitrust Complaint specifically alleging Sherman Act Section Two and
23 Clayton Act Section Four allegations against the named Defendants. It
24 is believed these counts may be expanded through discovery to include
25 further antitrust claims as well.

The SAC properly alleges US Government Interference with Plaintiffs' Access to the Courts, conversion of their Property and Fraud before the WTO.

8. The SAC further respectfully clarifies the key US Government Interference Claim (whether through FISA, a Presidential Directive like PD12333 or NSPD, or the use of the IEEPA [50 USC 1701] or like related controls), and the State of California Fiduciary Failing Claim, in regards to allowing the Federal Government to use such an instrument specifically to strip the Plaintiffs of Property Rights without compensation, hearing or trial as well.
9. The SAC properly alleges (against both Governments - US and California State) a Fifth Amendment Conversion of Property Rights pertaining to the Enforcement of Sole Ownership of PHASE-II Intellectual Properties as protected under US6370629 along with both entities refusing to provide compensation under Eminent Domain against both the US and Foreign instances of US6370629 when they formally blocked prosecution and recovery of those IP rights, something Plaintiffs claim constitutes a 5th Amendment Property Conversion violation without potential of court review and as such is unconstitutional.

No Oversight for discovering whether IEEPA

10. Because under the IEEPA there was never a provision for it being used to affect property rights of a private citizen it has no mechanism under Congress' definition of the act for oversight. Because there is no method for discovering whether IEEPA was used in this matter based on Congress's writing of the IEEPA itself it would be unconstitutional in form to use to manipulate or prevent access to the Courts by serving

1 a IEEPA writ on an Attorney representing Plaintiffs(as the Complaint
2 alleges fully). In the case of the Government's potential use of the
3 IEEPA to create an Order for instance, there is no defined oversight or
4 statement from Congress as to how a US Citizen can fight the
5 President's declaration "that their property and its use would create
6 an economic emergency in an international context and so had stopped or
7 ordered those rights terminated or suspended under the IEEPA".

8 11. So without the Court agreeing that the use of such an order would
9 interfere with Plaintiffs' rights and their ordering the Government to
10 functionally Disclose and Disgorge - i.e. to admit formally or deny
11 formally for the Court such an order exists and for the Court to if it
12 does to formally order it Quashed as being in violation of the
13 Plaintiffs' Fourth, Fifth, Seventh and Fourteenth Amendment Rights.

14 The SAC properly notices the Importance of technologies

15 12. The SAC also properly notices the importance of this specific
16 piece of litigation *in that most if not all divisions of the Government*
17 *(Local, State and Federal as well as all other Governments today) rely*
18 *on infringing equipment, meaning the US Government itself is a consumer*
19 *and operator of infringing equipment and services*, hence the
20 requirement for the Three Judge Panel in that not only is
21 "apportionment" as defined in the US Constitution impossible through
22 the accepted processes without infringing, the functional operations of
23 the Court are tied to infringing equipment and systems as well.

24 13. Finally, the SAC supports the Summary Motions for Partial
25 Judgments on Counts 1, 8, and 10 acknowledging that much of this case

1 can be reviewed and ruled on from the Bench once the basic FRAUD IN THE
2 TRANSFER OF THE PATENT FROM DDI TO DATUM is recognized and ruled on
3 herein, since the evidence supporting Plaintiffs' claims is strong.

4 **Modular Structure of Counts in the SAC**

5 14. The SAC is composed of a set of Patent Infringement Claims and
6 associated Antitrust Actions pertaining to the US6370629 and US6393126
7 Patent Families. The SAC was designed to allow any of the Counts to be
8 ruled on independently of the others, i.e. Count 9 and 10 against the
9 State of California and USG can be ruled on separately from Count 1
10 against Microsemi or Counts 2-8 against the Infringer/Inducers as
11 alleged in the Complaint.

12 15. This design was to facilitate proper leave way for the Court to
13 keep the main body of the Litigation inside the Court to keep Statutes
14 from being needed to be defended again and again, and so any one Count
15 found improperly plead or otherwise insufficient will and should not
16 impact any other counts in the matter as filed.

17 ***The SAC's Count 1 and Counts 2-8 - Properly Allege Patent*** 18 ***Infringement under 35 USC 271***

19 16. The SAC properly charges 35 USC 271 (a) infringement against
20 Microsemi in Count 1 and all named Defendants in Counts 2-8.

21 17. The SAC properly charges 35 USC 271 (b) and (c) infringement
22 against several of the in the same Counts 2-8 for their production of
23 Softwares which contain PHASE-II Intellectual Properties without
24 license as well.
25

The SAC Count 8 properly charges the IETF with Sherman Act and Clayton Act violations tied to Patent Infringement of US6370629's Phase-II IPs

18. In count 8 the SAC properly charges the IETF with Patent Fraud in the form of relicensing the Patent Protected IP inside of PERFORMANCE RIGHTS controlled IP (their Published Network Standards Prototype Documents called RFCs) published and registered with a formal IETF copyright by the IETF itself. The IETF fraudulently misrepresents its ability to copyright a Recipe for a Network System and Technology, the IETF RFC¹.

19. The IETF protecting and relicensing third parties to create computer programs from their standards documents ("Recipes" or prototype specifications) is the source of the fraud since those programs contain steps which are from the CLAIMS from the US6370629 Patent and the IP it Teaches a Method of Use for.

20. This is an emerging problem today which Congress has not addressed, one which they have left to the Courts to interpret at this point. That question being "What happens when a legitimate Patent Protected IP is included in a set of programs which are protected under a third party's copyrights"? In this case created under the guidance of a party claiming they control the Copyrights controlling all use of that IP.

¹ Recipes are considered "methods" or "procedures" and are not covered under the scope of copyright law unless the expression of which constitutes "substantial literary expression". (<http://www.copyright.gov/fls/fl1122.html>)

21. Because the IETF is in full control of both the systems it uses and the Copyright Claims it made in publishing those standards and program templates, they are fully liable.

22. Plaintiffs also alleged properly that these actions on behalf of the IETF are illegitimate Sherman Act Section Two and Clayton Act Section Four violations (see Count 8) and as such created Antitrust damage and the Plaintiffs' claim. The Antitrust Market Segment, Antitrust Damage and Antitrust Sections are properly enumerated in the SAC's Count 8 as well.

23. The SAC additionally charges IETF and Cisco with Antitrust Violations of the Sherman Act Section-2 over the NEA Protocol fiasco.

24. Finally with regard to the NETWORKING STANDARDS INFRINGEMENTS the SAC properly alleges a set of direct infringements by Defendant IETF in its use of infringing equipment under 35 USC 271(a) and its issuing COPYRIGHT PROTECTION against a Recipe, something prohibited under US Copyright Law and Practice.

25. Since the IETF standards themselves are Recipes (Prototypes) they are specifically covered under the Copyright exclusion to Recipes not including strong literary content. Hence the only protections an IETF Standard can have are PERFORMANCE RIGHTS against technologies outside the IETF copyright itself which are included in those standards.

Plaintiffs Have Standing

26. Plaintiffs have standing, whether it's limited to discovery of their total loss amounts through infringement analysis of each

1 infringing product made by the Defendants or positive forward
2 enforcement of both damage and licensing; both create direct standing
3 in this matter.

4 ***Plaintiffs have standing as the original Creator's of PHASE-II***
5 ***Intellectual Properties the US6370629 Filing is based on***

6 27. Plaintiffs further have standing whether as victims of the
7 original fraudulent transfer of the US6370629 Patent Filing to Datum
8 Corp by Digital Delivery Inc in July of 1999 to those against
9 enforcements today as the Sole Owner of PHASE-II IP and as such the
10 only party capable of enforcing claims of infringement against it
11 whether through the IETF's alleged inclusion of it in their standards
12 or through the Patent's protection of PHASE-II IP itself.

13 **The US Government may not like it but the Plaintiffs' Losses are real**
14 **whether classified or not**

15 28. Losses against enforcements are just that. Plaintiffs have
16 numerous non-classified uses to prove the fraud outside of any
17 Intel/National Security/IEEP type order from the Government. Proper
18 and realistic damage and loss models can easily be created for each of
19 these losses to date in each of the Jurisdictions US6370629 was filed
20 and abandoned in as well.

21 29. That is why the issue of the use of any mechanism of interference
22 with Plaintiffs' access to the Courts or their Attorneys' ability to
23 properly represent them is critical to adjudicate with the three judge
24 panel motion first in this matter.

30. Losses which top trillions would be considered information so detrimental to the commerce operations of a Government, no government would want released, especially since it would mean their existing financial statements about GDP and other key statistics were not just wrong but very wrong. So it is easy to understand why a Government Official might be mistakenly motivated to issue a special piece of paper, one which would have the chilling effect of preventing the Plaintiffs' Attorneys from constructively representing them in any form before this or any Court of Law in the US.

31. In the event a FISA, IEEPA or other Presidential Directive was used to strip Plaintiffs of their property and access-to-the-court rights, Plaintiffs have standing to demand review of the issuance of that order and its Constitutionality before this the US District Court.

Count-1 Infringement, Tortuous Interference, and Antitrust Violations under Sherman Act Section Two, and Clayton Act Section Four violations

32. Count-1 (SAC p45) in particular properly pleads both Infringement under 35 USC 271 (a) and inducement to infringe, as well as Tortuous Interference, violations of the International Antitrust Act and Sherman Act Section Two and Clayton Act Section Four violations.

33. As just one of the properly stated complaints in the SAC, unbeknownst to Plaintiffs until well after the Patent was issued, the File Wrapper revealed that Microsemi had committed additional frauds and that the Patent had numerous reorganizations of claims to place key certification-controls into claims which were not intended to contain

1 them. Additionally also we find there was an entire claim added after
2 the Settlement without authorization or notice in 2001.

3 34. This functionally made all of the original US6370629 a repository
4 of PHASE-II Technology and functionally divorced it from the underlying
5 practices in the '992 Patent that controlled the DDI Confidential
6 Courier product.

7 35. Those unlicensed additional controls were instead supposed to be
8 filed in the proposed separate GLASSEY/MCNEIL Patent application. The
9 filing of these changes functionally prevented Plaintiffs from
10 registering what would become the MASTER PHASE-II Technology Patent
11 because functionally, with the changes made to the US6370629 which were
12 not authorized, Microsemi in effect filed the Glassey/McNeil Patent.

13 36. When confronted on the Changes they replied that Glassey and
14 McNeil's rights were safe and that they did "what it took to get the
15 patent issued as the FIDUCIARY Managing the Patent Application for us".

16 **The Matter is Timely Filed**

17
18 37. Plaintiffs have current Sherman Act claims which pertain to
19 current actions (within the last 24 months), as well as claims
20 pertaining to documents controlled under California Law, meaning four
21 years (48 months).

22 38. Additionally someone, either Microsemi Shareholders or
23 Plaintiffs, owns a claim for PHASE-II Infringements under 35 USC 271
24 (a) against all of the named Defendants, a claim which is properly
25

1 plead in COUNTS 1-8. Each new infringement tolling out any statutes
2 therein.

3 39. Finally the **ongoing offense claim** is also properly plead, and it
4 tolls out any statute of limitations arguments for specific acts as
5 well.

6 The Apportionment Control Argument

7
8 40. In the United States the Government - the Congress, the Courts,
9 and all aspects of the Administrative Branch today - are totally
10 reliant on Computers and the Networks and Back-End Services which link
11 them.

12 41. The processes which implement the Constitutional Apportionment
13 Practices as defined in the US Constitution are controlled by numerous
14 infringements in Claims 19-32 of US6370629. That means the practices
15 which implement the Congressional Actions Supporting Constitutional
16 Apportionment must by their very practice infringe on Plaintiffs'
17 Property Rights and as such Plaintiffs are entitled to the Eminent
18 Domain fees owed to them by all of the States as well as the Federal
19 Government which are using those systems without remuneration in any
20 form to the Plaintiffs today.

21 42. This is why a THREE JUDGE PANEL should be mandatory in this
22 matter, to protect the Court's use of this same IP without
23 compensation, since the Courts themselves which are the oversight for
24 the Apportionment Practice question are also tied to the same
25

1 Infringement or Fraud Loss component of Plaintiffs' IP Rights against
2 the patent filing of US6370629.

3 ***US6370629 should control most online commerce in the US today***

4
5 43. Today all computers running networking and many with applications
6 using Location Based Services all infringe at the very least on Claims
7 19-32 of US6370629 as a 35 USC 271 (a) type infringement. The
8 infringements are built into two separate areas of the systems, the
9 networking in the actual protocols and tools (like Secure DNS), as well
10 as those programs which implement some User Experience or Web-Based
11 Commerce Platform. Each of the Infringing Claim Constructions is very
12 simple to articulate and constrain. The actual specific areas of each
13 infringing program can be mapped out in a manner allowing for a fast
14 review and approval cycle by the Court as well, they are that obvious.

15 **US6370629 - whoever owns it is a multi-billion dollar asset which has been
16 kept off book**

17 44. Because of what it controls the failure to enforce '629 needs to
18 be reported to the shareholders of Microsemi both as a fraud loss and
19 to document the abandonment to the Shareholders of this asset and the
20 financial damage it caused the Plaintiffs, and likely the US.

21 45. Which means that US6370629, whoever owns it, the value must be
22 reported either as an asset or loss, and yet its value doesn't appear
23 anywhere on any corporate ledgers or the loss of opportunity either.
24 This also is something which will be worked out by a Trier of Fact.
25

Plaintiffs and their Loss Types

46. The Plaintiffs are either entitled to the enforcements they claim or a loss against the Settlement issuance itself and what it cut into relative to their original rights.

That means today a total loss for all seven of the abandoned foreign Patents known as of this filing, as well as the previous 14 years of US6370629 Patent at the very least.

Summary

47. Plaintiffs believe that the complaint is fully sufficient and asks for specific help in a very unusual manner.

48. Plaintiffs assert that based on the fact there is confusion as to what their rights to Phase-II IP are today and how they are to enforce those against programs now running in the public and private spheres which infringe that this matter should proceed.

12-18-2014
/s/ Todd S. Glassey
Todd S. Glassey, In Pro Se
Todd S. Glassey, In Pro Se
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321
tglassey@earthlink.net

12-18-2014
/s/ Michael E. McNeil
Michael E. McNeil, In Pro Se
Michael E. McNeil, In Pro Se
PO Box 640
Felton CA 95018-0640
831-246-0998
MeMcNeil@Juno.COM

EXHIBIT H

MELINDA HAAG (CABN 132612)
United States Attorney
ALEX G. TSE (CABN 152348)
Chief, Civil Division
WARREN METLITZKY (CABN 220758)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7066
Facsimile: (415) 436-6748
Email: warren.metlitzky@usdoj.gov

Attorneys for Defendant
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TODD S. GLASSEY; and MICHAEL
E. McNEILL,

Plaintiffs,

v.

MICROSEMI INC; US GOVERNMENT -
POTUS; THE STATE OF CALIFORNIA,
GOVERNOR BROWN; THE IETF AND
THE INTERNET SOCIETY; APPLE INC.;
CISCO INC.; EBAY INC.; PAYPAL INC.;
GOOGLE INC.; JUNIPER NETWORKS;
MICROSOFT CORP.; NETFLIX INC.;
ORACLE INC.; MARK HASTINGS; ERIK
VAN DER KAA; and THALES GROUP
as unserved DOES.

Defendants.

Case No. 14-CV-03629-WHA

**DEFENDANT UNITED STATES'
RESPONSE TO THE DECEMBER 11,
2014 ORDER TO SHOW CAUSE**

Date: n/a
Time: n/a
Location: Ctrm. 8, 19th Flr.

The Honorable William H. Alsup

INTRODUCTION

Plaintiffs have had multiple chances to plead *coherent* and *cognizable* claims against the United States and against a litany of major technology companies. They have used those opportunities to file motion after motion (none of which have merit), to “lard” the record with exhibits, and to continue to insist, without any factual basis, that there is a global conspiracy to keep their intellectual property rights from them. In their many filings, including their most recent response to the court’s Order To Show Cause, plaintiffs have still not established that they have standing to sue the United States or that the United States waived its sovereign immunity. The court gave plaintiffs have a final chance, and they failed to show why this case should continue to burden the court, the United States Attorney’s Office and seven different law firms and their clients. The court should end this litigation now.

BACKGROUND

The court is already familiar with plaintiffs’ allegations that they own intellectual property rights that are infringed by virtually every computer and network in the world. *See* Dkt. No. 109. Plaintiffs make the following claims against the United States.¹ *First*, they claim that the United States refused to criminally prosecute “a patent fraud based EEA and Sherman Act complaint.” Second Amended Complaint (“SAC”) ¶¶ 255-56, *see also id.* ¶¶ 102-3. *Second*, they allege that some government issued a warrant for plaintiffs’ counsel, which they contend violates plaintiffs’ right to unimpeded access to the courts. SAC ¶ 257; *see also id.* ¶¶ 104-16; Dkt. No. 137. They are unsure whether a warrant was issued, what kind of warrant, or who issued the warrant. *See, e.g.*, Pltfs’ OSC Response (Dkt No. 159) ¶ 8; Pltfs’ Motion to Quash (Dkt. No. 137) ¶ 2. Though not identified as a claim in Count 9 against the United States, elsewhere in the SAC plaintiffs contend that they are entitled to an IRS “fraud loss.” SAC ¶¶ 6-7. They brought a motion based on this claim. Dkt. No. 122. Also, though it does not on its face appear to be a direct claim of infringement against the United States, plaintiffs contend that the

¹ Plaintiffs do not plead when the actions that give rise to their claims against the United States occurred. Many of plaintiffs’ claims are time-barred (*see generally* Non-Government Defs’ OSC Response), and those claims likely include some or all of the claims against the United States. Additionally, plaintiff makes a claim for antitrust violations, but those appear to be against the California government. SAC ¶¶ 25-268. If there are intended to include the federal government, those claims fail for a host of reasons, including those detailed in the non-governmental defendants’ brief at pp. 11-13.

United States purchased equipment that infringes plaintiffs' patent(s), and that the United States is dependent on computers that run infringing products. SAC ¶ 32.

DISCUSSION

I. THE COURT LACKS JURISDICTION BECAUSE THE UNITED STATES HAS NOT WAIVED ITS SOVEREIGN IMMUNITY.

The Court should strike plaintiffs' complaint because they have not established that the United States waived its sovereign immunity.

It is black letter law that the United States is a sovereign, and no one may bring suit against it without its consent. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). If the United States has not waived its immunity, courts lack subject matter jurisdiction and the claim must be dismissed. *Elias v. Connett*, 908 F.2d 521, 527 (9th Cir. 1990). When the United States grants its consent to be sued, the terms of its consent define the Court's jurisdiction. *Meyer*, 510 U.S. at 475. Waivers of sovereign immunity must be unequivocally expressed, and cannot be implied. *Lehman v. Nakshian*, 453 U.S. 156, 160-61 (1981). Courts must strictly construe such waivers in favor of the United States. *Id.* The party invoking the court's jurisdiction bears the burden of proving its existence. *Id.* Such party must point to a statute by which the United States expressly waived its immunity from suit. *Id.* at 162; *E.E.O.C. v. Peabody Western Coal Co.*, 610 F.3d 1070, 1083-1084 (9th Cir. 2010).

In this case, plaintiffs have not met their burden to identify a statute in which the United States waived its immunity. Plaintiffs' first claim—that the United State refused to criminally prosecute a “patent based EEA and Sherman Act complaint”—fails to identify any statutory authority whereby the United States consents to be sued for a failure to prosecute. Plaintiffs begin their argument by correctly conceding that “generally speaking the Attorney General may refuse any prosecution demand as a discretionary control of the office of the Attorney General.” SAC ¶ 102. However, plaintiffs then allege that the legislative ratification of three “International Treaties with mandatory enforcement clauses” are a “Congressional override” of the Attorney General's discretion as to whether to prosecute certain criminal cases. SAC ¶ 102. Specifically, plaintiff contends that 19 U.S.C. § 2904 requires the United States under the “NAFTA, TRIPS and PCT agreements” to prosecute “a patent fraud based EEA and Sherman Act Complaint.” SAC ¶¶ 254-56. Plaintiffs do not explain which sections of those three

1 treaties require the United States to prosecute such complaints. Plaintiffs do not even provide legal
2 citations for the treaties; plaintiffs just use acronyms. No matter. Properly identifying the treaties would
3 not help plaintiffs anyway. § 2904 says nothing about waiving sovereign immunity. Even if the
4 government was required to prosecute certain cases, it still cannot be sued for failing to do so.

5 Plaintiffs' second claim—that some sort form of intelligence warrant was issued to their
6 counsel—similarly fails to identify any statute that explicitly waives sovereign immunity. In the SAC,
7 plaintiffs repeatedly use the acronym “FISA” (the Foreign Intelligence Surveillance Act) without
8 referencing any applicable code sections where a sovereign immunity waiver might exist. Plaintiffs'
9 Motion to Quash FISA Or Related (Foreign Issued) Order In This Matter is hardly any better. Dkt No.
10 137, ¶¶ 1-2. There, plaintiffs cite the FISA legislation generally without identifying any specific section
11 that explicitly waives sovereign immunity. Plaintiffs' response to the Court's Order To Show Cause
12 shares the same infirmity. Dkt. No. 159, ¶ 8. Though their response cites a specific statute that grants
13 certain emergency powers, 50 U.S.C. § 1701, plaintiffs still do not identify any section of that statute
14 that permits plaintiffs to sue the United States. Having failed to identify a statutory waiver of sovereign
15 immunity, plaintiffs are also barred from proceeding with a direct, *i.e.*, non-statutory, claim against the
16 United States. Despite plaintiffs' contention that the United States is directly liable for violations of the
17 Fourth, Fifth, Seventh and Fourteenth Amendments (SAC ¶ 257; Pltfs' OSC Response, ¶ 11 (Dkt. No.
18 153)), the United States has not waived its sovereign immunity for constitutional violations. *FDIC v.*
19 *Meyer*, 510 U.S. 471 (1994). It is plaintiffs' burden to establish a waiver of sovereign immunity, and
20 they have not done so. *See also Al-Haramain Islamic Foundation, Inc. v. Obama*, 705 F.3d 845, 854 -
21 855 (9th Cir. 2012) (no sovereign immunity waiver for FISA warrant issued under § 810).

22 Plaintiffs' claim for “fraud losses” under 26 U.S.C. § 165 (cited as IRC165) similarly fails to
23 establish a waiver of sovereign immunity. § 165 does not contain an explicit waiver. Instead, the statute
24 addresses when a taxpayer may deduct a loss on their taxes. *Id.*

25 **II. PLAINTIFFS HAVE NOT ESTABLISHED THAT THEY HAVE STANDING.**

26 The court should also dismiss plaintiffs' suit for lack of standing. This argument is addressed in
27 more detail in the United States' brief at Docket No. 158, but is summarized below.

To bring suit in federal court, a plaintiff must establish three constitutional elements of standing: (1) an injury in fact,” that is “concrete and particularized and “actual and imminent”; (2) caused by the conduct, and not the result of the independent action of some third party before the court; and (3) that it is likely, as opposed to merely speculative, that the injury will be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Clapper v. Amnesty Int’l USA*, ___ U.S. ___, 133 S. Ct. 1138, 1147 (2013).

Here, for each of their claims, plaintiffs have not established standing. *First*, plaintiffs’ allegation that they suffered injury from the Attorney General’s alleged failure to criminally prosecute patent fraud is so bereft of facts that plaintiffs have established neither a “concrete and particularized” nor an “actual and imminent” injury. Causation and redressability are similarly lacking. *Second*, plaintiffs’ claim that their attorneys were subject to some sort of warrant fares no better. They only speculate that some sort of warrant may have been issued to their attorneys (a third party), and that some injury to plaintiffs was caused by that issuance. Nor can they show that such a warrant caused any harm to plaintiffs that is “fairly traceable” to a single statute, or that their alleged injury—denial of unimpeded access to the courts—is redressable by quashing such a warrant. Plaintiffs’ response to the Court’s Order to Show Cause demonstrates perfectly the rampant speculation at the root of plaintiffs’ standing argument. Pltfs’ OSC Resp. ¶¶ 30-31 (speculating why a government might issue such a warrant and explaining that they would have standing *if* a “FISA, IEEAP or other Presidential Directive was used”).

III. THE COURT DOES NOT HAVE JURISDICTION OVER THE FRAUD LOSS CLAIM.

The Court does not have jurisdiction over plaintiffs’ fraud loss claim for the separate and independent reason that the Declaratory Judgment Act (“the Act”), 28 U.S.C. § 2201, bars the relief sought by plaintiffs. While Courts generally have jurisdiction to grant declaratory relief under the Act, the statute specifically prohibits the Court from granting declaratory relief in controversies with respect to federal taxes. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 n.7 (1974); *Hutchinson v. United States*, 677 F. 2d 1322, 1326-27 (9th Cir. 1982). Here, plaintiffs seek a declaration from the Court that they are entitled to take fraud losses on their tax returns. That is *exactly* the sort of declaration of rights

specifically barred by the Act.² Moreover, plaintiffs' claim for fraud losses depends on a finding that they own certain intellectual property rights. As the other non-government defendants have separately demonstrated, plaintiffs' ownership claims fail. *See* Non-Government Defs' OSC Response.

IV. THE COURT SHOULD NOT GRANT PLAINTIFF LEAVE TO AMEND

When the Court struck plaintiffs' First Amended Complaint, it gave plaintiffs leave "to file a *proper* second amended complaint" that cures the deficiencies identified by the court and in which plaintiffs "must plead their *best and most plausible* case." 10/30/14 Order Striking Complaint And Vacating Hearings at 4 (Dkt. No. 109) at 4-5 (emphasis added). "Failure to do so may well result in dismissal with prejudice" and "further opportunities to plead will likely not be allowed." *Id.* Plaintiffs' "best and most plausible case" is not even close to sufficient. And even after being given another opportunity to explain themselves in response to the Court's Order To Show Cause, plaintiffs have offered more of the same rambling, incoherent arguments and allegations. *See* Pltfs' OSC Response (Dkt. No. 159). There is little reason to force the parties through another round of costly, time-consuming motions only to end up exactly where the parties find themselves now. Plaintiffs have failed to use their opportunities to properly state their case, and the Court should end this litigation *now*.

CONCLUSION

For the foregoing reasons, the Court should strike plaintiffs' Second Amended Complaint and dismiss this action with prejudice.

DATED: December 19, 2014

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/ Warren Metlitzky
WARREN METLITZKY
Assistant United States Attorney

² If plaintiff attempts to characterize their complaint as seeking injunctive relief, the Anti-Injunction Act bars suits to restrain the assessment or collection of federal taxes. 26 U.S.C. § 7421(a).

EXHIBIT I

1 *[Counsel Listed on Signature Block]*

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8 UNITED STATES DISTRICT COURT
9 FOR NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 TODD S. GLASSEY and MICHAEL E.
13 MCNEIL,

14 Plaintiffs,

15 v.

16 MICROSEMI INC; et al.,

17 Defendants.
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CASE NO.: 3:14-cv-03629-WHA

**DEFENDANTS' RESPONSE TO ORDER
TO SHOW CAUSE [DKT. 152] WHY
PLAINTIFFS' SECOND AMENDED
COMPLAINT [DKT. 112] SHOULD BE
STRICKEN**

Complaint Filed: August 11, 2014
FAC Filed: August 25, 2014
SAC Filed: November 13, 2014

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Microsemi Corporation (“Microsemi”), together with the Internet Engineering Task Force and The Internet Society (collectively referred to as the “ISOC Defendants”), Apple Inc., Cisco Systems, Inc., Juniper Networks, Inc., Microsoft Corporation, Oracle Corporation, eBay Inc., PayPal, Inc., Google Inc., and Netflix, Inc. (collectively “Internet Company Defendants”) (collectively Microsemi, the ISOC Defendants, and the Internet Company Defendants are referred to as “Defendants”), hereby respond to the Court’s Order to Show Cause why Plaintiffs’ Second Amended Complaint (“SAC”) should be stricken.

After years of unsuccessfully litigating against Microsemi over a host of grievances, Plaintiffs filed the instant suit purporting to be the victims of a vast governmental and private sector conspiracy that infringes on their intellectual property rights and deprives them of judicial redress. So far as can be discerned, Plaintiffs claim an alleged interest in Microsemi’s technology—an interest which Plaintiffs contend permits them to recover infringement damages for virtually every computer in the world—despite the fact that they long ago assigned all right, title and interest in any patents to Microsemi.

While *pro se* litigants are accorded some leeway, Plaintiffs have—as is apparent from the docket in this case—exhausted all leeway and then some. Plaintiffs have filed three complaints (Dkts. 1, 6, and 112), two motions for a three-judge panel (Dkts. 15 and 138), and four motions for partial summary judgment that seek manifestly improper relief (*i.e.*, prospective declaration of tax liability). (Dkts. 118, 122, 123, and 139.)

The Court struck Plaintiffs’ First Amended Complaint (“FAC”), noting that it “suffers from so many deficiencies that it would be hopeless to proceed.” (Dkt. 109 at 3:24-25.) The same is true for the SAC, which is largely a rehash of the factually deficient allegations of the FAC, and should likewise be stricken *with prejudice* for: (1) lack of standing to assert patent and copyright infringement; and (2) failure to state a claim for which relief may be granted as to all claims. For example, Plaintiffs’ antitrust claims (as far as intelligible) fail, at a minimum, to plead the requisite

1 antitrust injury and plausible relevant product market. Likewise, Plaintiffs fail to allege ownership
2 of any valid copyrighted work. To the extent the SAC can be construed to assert additional claims
3 (*i.e.*, tortious interference by Microsemi), those claims fail to allege any facts that comprise an
4 element of a claim. Moreover, any conceivable claim Plaintiffs might imagine is time-barred, as
5 Plaintiffs' own pleadings establish that they have been on notice of their purported claims since at
6 least 2002.

7 The deficiencies in Plaintiffs' pleadings are not the product of *pro se* procedural missteps
8 that could be rectified by amendment. Rather, Plaintiffs' claims are substantively unfounded and
9 have no support in fact or law. Accordingly, following the Court's order stating that "Plaintiffs
10 must plead their best and most plausible case and further opportunities to plead will not likely be
11 allowed" (Dkt. 109 at 4:27-5:2), Plaintiffs should not be permitted to file a third amended
12 complaint, and this case should be dismissed with prejudice.

13 **II. FACTUAL BACKGROUND**

14 Defendants provide this background to familiarize the Court with the present issues. A
15 more comprehensive background is found in Microsemi's Opposition to Plaintiffs' Motion to Void
16 the Settlement Agreement. (Dkt. 145 at 2:11-6:23.)

17 **A. Current Status of the Action**

18 Plaintiffs filed the FAC in the present action on August 25. After this Court struck the FAC
19 on October 30, Plaintiffs filed an amended complaint on November 12. (Dkt. 110.) Plaintiffs
20 subsequently filed the "corrected" SAC¹ on November 13. (Dkt. 112.) The SAC contains ten
21 counts, of which Counts 1 through 8 are directed against Defendants²:

22 **Count 1**: Alleged infringement of the '629 Patent, Sherman Act and
23 Clayton Act violations, and tortious interference against Microsemi.
24 (SAC ¶¶ 171-183.)

25
26 ¹ All references to the SAC are to the pleading filed as Dkt. 112.

27 ² While the SAC mentions Defendant Netflix in passing, none of the enumerated counts are
28 directed to Netflix.

Counts 2 through 7: Alleged infringement of the '629 Patent against Microsoft, Google, Apple, Oracle, Ebay and Paypal, Cisco, and Juniper. (SAC ¶¶ 184-214.)

Count 8: Alleged infringement of the '629 Patent and Sherman Act and Clayton Act violations against the ISOC Defendants. (SAC ¶¶ 215-252.)³

Both the ISOC Defendants and Microsemi have filed motions to dismiss, and Defendants incorporate the arguments made in those motions as further grounds for striking the SAC. (*See* Dkt. 142, Dkt. 153.) Various Defendants also have filed briefs in opposition to Plaintiffs' numerous meritless motions for summary judgment. (*E.g.*, Dkt. 145, Dkt. 155.)

B. Relationship Between the Plaintiffs, Microsemi's Predecessors, and Microsemi

The factual background includes two entities, Digital Delivery, Inc. ("DDI") and Datum, Inc. ("Datum"), that have since been merged into Defendant Microsemi. Around July 1999, DDI became a wholly owned subsidiary of Datum. (SAC ¶ 25.) In 2002, Datum was acquired by Symmetricom. (SAC ¶ 21.) In 2013, Symmetricom was acquired by Microsemi.

In 1998, Plaintiffs and DDI (Microsemi's predecessor-in-interest) agreed to jointly pursue the patent application that ultimately issued as the '629 Patent. (*See* Dkt. 123-4 at Recitals Paragraph B.) To facilitate the patent filing, Plaintiffs and DDI entered into an interim "Co-Inventor Agreement" to memorialize ownership rights and to define the parties' contribution to the '629 Patent and the application for that patent (collectively referenced as the "Controlling Access Patent" in the Co-Inventor Agreement). (*See* Dkt. 123-4 at Recitals Paragraphs B and D.) For example, DDI would retain ownership of its own "Confidential Courier" technology and corresponding patent. (Dkt. 124-4 at Recital A., Section 1A., Section 1B. ("[Plaintiffs] shall have no rights to any part of the Courier Patent, or to the claims regarding the Courier Patent which are

³ Although the SAC labels the count against the ISOC Defendants as "Count 9," it is actually the eighth count. The allegations in this count also refer to Plaintiffs' purported "performance rights" under the Copyright Act.

1 incorporated in the Controlling Access Patent or to the Confidential Courier product now produced
2 by [DDI]”); *see* FAC ¶ 76.)

3 On the same date they signed the Co-Inventor Agreement, Plaintiffs assigned all right, title,
4 and interest in the ’629 Patent to DDI. (Dkt. 19-1 at 4-7 (document titled “ASSIGNMENT,” which
5 states “For valuable consideration, we [Michael E. McNeil and Todd S. Glassey] hereby assign to
6 [DDI] and its successors and assigns [] the entire, right, title and interest throughout the world in
7 the inventions and improvements which are subject of an application for United States patent
8 signed by us, entitled CONTROLLING ACCESS TO STORED INFORMATION”).)

9 **C. Relevant Agreements and Ownership of the ’629 Patent**

10 In November 1999, to settle a dispute between Datum/DDI and Plaintiffs, Datum/DDI and
11 Plaintiffs entered into two contracts referred to as the Datum/TTI Settlement (Dkt. 123-5) and the
12 DDI/Controlling Access Settlement (Dkt. 123-6). The DDI/Controlling Access Settlement
13 superseded the Co-Inventor Agreement and became the “definitive” and only agreement setting
14 forth the parties’ rights with respect to the ’629 Controlling Access Patent. (*See* Dkt. 123-6 at
15 Sections 1.1, 1.4, 1.5, 3.7.) This agreement confirms that Plaintiffs assigned all rights in the ’629
16 Controlling Access Patent, including rights to both U.S. and foreign patents and patent
17 applications, to Microsemi: **“GMT/GLASSEY/MCNEIL assign all rights, title and interest in
18 the Controlling Access Patent and the application therefor, to DATUM.”** (Dkt. 123-6 at
19 Sections 2.2, 3.2 (emphasis added).)

20 Plaintiffs maintained rights to technology referenced as the “Phase II Technology,” but
21 granted to Datum a perpetual and irrevocable license to this technology in connection with
22 products and technology covered by the Controlling Access Patent. (*See* Dkt. 123-6 at Section
23 3.3.) Today, Microsemi, which is Datum’s successor-in-interest, remains the current assignee of
24 the ’629 Patent.⁴ (*See* FAC ¶ 129 (“The Controlling Access Settlement is still in force and serves
25 as the basis for Microsemi’s continuing claim to be the assignee of the ’629 Patent.”).)

26 ⁴ The USPTO database shows the assignment record on February 13, 2014 to Microsemi.
27 [http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&frame=&pat=6370629&pub=
28 &intn=&asnr=&asnri=&asne=&asnei=&asns=](http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&frame=&pat=6370629&pub=&intn=&asnr=&asnri=&asne=&asnei=&asns=).

Neither the DDI/Controlling Access Settlement nor the Datum/TTI Settlement contains any provision that (i) required DDI to seek Plaintiffs' permission to file patent applications (U.S. or foreign); or (ii) required DDI to enforce or maintain the Controlling Access Patent (or any foreign counterparts) or any patents related to Phase II Technology. (Dkts. 123-5 and 123-6.) Both agreements are governed by California law. (Dkt. 123-6 at Section 8.1; Dkt. 123-5 at Section 8.1.)

III. LEGAL STANDARDS

A. Dismissal for Lack of Subject Matter Jurisdiction

"A court may exercise jurisdiction only if a plaintiff has standing to sue on the date it files suit." *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1364 (Fed. Cir. 2010) (internal quotations and citation omitted). The plaintiff bears the burden of establishing that it has standing. *Id.*; see also *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (plaintiff has burden of establishing subject matter jurisdiction). Standing to sue for patent infringement is conferred by the Patent Act, which provides that a patent's legal owner has the exclusive right to sue. See 35 U.S.C. § 281; see also *Propat Intern. Corp. v. Rpost, Inc.*, 473 F.3d 1187, 1189-94 (2007) (finding purported transferee of patent lacked standing to sue because it had no true ownership interest in the patent). At the pleading stage, a plaintiff meets this burden by alleging sufficient facts to show a proper basis for the court to assert subject matter jurisdiction over the action. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

B. Dismissal for Failure to State a Claim

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a pleading contain "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); FED. R. CIV. P. 8(a)(2).

If that pleading fails to state a claim upon which relief can be granted, dismissal is appropriate under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See, e.g., *Bell Atlantic Corp.*, 550 U.S. at 555, 570; see also FED. R. CIV. P. 12(b)(6). A claim's allegations must "possess

1 enough heft” to show an entitlement to relief thus justifying that the costly process of litigation
2 continue. *Bell Atlantic Corp.*, 550 U.S. at 557.

3 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
4 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
5 662, 678 (2009). “While a complaint . . . does not need detailed factual allegations . . . a plaintiff’s
6 obligation to provide the grounds of his entitlement to relief requires more than labels and
7 conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual
8 allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic*
9 *Corp.*, 550 U.S. at 555 (internal quotation marks and citations omitted); *see also Ashcroft*, 556 U.S.
10 at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
11 statements, do not suffice.”). A court is not required to accept “legal conclusions cast in the form
12 of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.”
13 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994); *Warren v. Fox Family*
14 *Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Moreover, the court need not assume the
15 validity of “allegations that contradict matters properly subject to judicial notice or by exhibit.”
16 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Rather, the court may
17 consider documents submitted as part of the complaint or upon which the complaint necessarily
18 relies. *Lauter v. Anoufrieve*, 642 F. Supp. 2d 1060, 1077 (C.D. Cal. 2008), adopted 642 F. Supp.
19 1060, 1069 (C.D. Cal. 2009).

20 Where the facts and dates alleged in the complaint indicate that a claim is barred by the
21 statute of limitations or preempted, dismissal is appropriate. *Jablon v. Dean Witter & Co.*, 614
22 F.2d 677, 682 (9th Cir. 1980).

23 **IV. ARGUMENT**

24 **A. Plaintiffs’ Allegations of Patent Infringement Must Be Stricken**

25 **1. Microsemi Owns All Rights to the ’629 Patent**

26 As a threshold matter, Plaintiffs’ claims in this action are dependent upon their purported
27 ownership of at least part of the ’629 Patent. However, Defendant Microsemi—not Plaintiffs—

owns all right, title and interest to the '629 Controlling Access Patent. In 1998, Plaintiffs assigned all rights in the '629 Patent—including all U.S. and foreign patent and patent applications—to Microsemi's predecessor DDI: **"For valuable consideration, [Plaintiffs] hereby assign to [DDI] and its successors and assigns [] the entire, right, title and interest throughout the world in the inventions and improvements which are subject of an application for United States patent signed by us, entitled CONTROLLING ACCESS TO STORED INFORMATION . . ."** (Dkt. 19-1 (emphasis added).)

And in the 1999 DDI/Controlling Access Settlement, Plaintiffs again assigned all legal right, title and interest to the '629 Patent—including all U.S. and foreign patents and patent applications—to Microsemi's predecessor Datum: **"GMT/GLASSEY/MCNEIL assign all rights, title and interest in the Controlling Access Patent and the application therefor, to DATUM."** (Dkt. 123-6 at Section 3.2 (emphasis added); *see also* Dkt. 123-6 at Section 2.2; FAC ¶ 101.) The agreement provides no language giving Plaintiffs any rights, let alone enforcement rights, in the '629 Patent. (Dkt. 123-6.)

Indeed, Plaintiffs admitted numerous times in the FAC that Microsemi is the assignee of the '629 Patent and that the DDI/Controlling Access Settlement "is still in force and serves as the basis for Microsemi's continuing claim to be the assignee of the '629 Patent." (FAC ¶ 129, *see also* ¶¶ 101, 142.) In the wake of the Court's order striking the FAC, Plaintiffs now make a transparent attempt to avoid dismissal of the SAC by asserting for the first time in the SAC that they own all rights in portions of the '629 Patent relating to "PHASE-II technology." (SAC ¶¶ 163, 129.) However, Plaintiffs fail to provide any factual basis for this new assertion. *See Lauter*, 642 F. Supp. 2d at 1077 (The Court "is not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint."). Tellingly, Plaintiffs continue to acknowledge in many of their recent filings that Microsemi is the sole assignee of the '629 Patent. (*See, e.g.*, Dkt. 122 at 2 (seeking tax loss benefits "for the loss of access to their PHASE-II IP Enforcement Rights protected under US6370629"); Dkt. 154 at 3:7-10 (asking the Court to "determine [who] owns the third party enforcement rights against the Phase-II IP protected inside

the US6370629”); *id* at 7:10-12 (referring to the ’629 Patent and stating “whichever [either Plaintiffs or Microsemi] of the two owns the rights”).)

2. Plaintiffs Lack Standing to Assert the ’629 Patent

Because Microsemi owns the ’629 Patent, Plaintiffs do not have standing to assert claims for infringement of that patent against any party. Accordingly, all patent infringement allegations should be dismissed for lack of standing. *See Abraxis Bioscience, Inc.*, 625 F.3d at 1364 (“[I]n a patent infringement action, ‘the plaintiff must demonstrate that it held enforceable title to the patent at the inception of the lawsuit’ to assert standing.”); *Nolen v. Lufkin Indus., Inc.*, 469 Fed. App’x 857, 862 (Fed. Cir. 2012) (finding no subject matter jurisdiction because “Plaintiffs have failed to make any plausible allegations of ownership of the patents at issue that do not first require judicial intervention”); *cf. Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1467 (Fed. Cir. 1998) (“An action for infringement must join as plaintiffs all co-owners.”).⁵

In apparent recognition of their lack of standing, Plaintiffs have asked this Court to convey to them some ownership interest in the ’629 Patent. Setting aside that all such requests are time-barred, as explained in the next section, the Federal Circuit has repeatedly held that “a claim for patent infringement does not arise under the patent laws when it requires judicial action to vest title in the party alleging infringement.” *Nolen*, 469 Fed. App’x at 860. Mere requests to rescind or cancel a patent assignment agreement *are not* sufficient to convey standing to sue. *Id.* Thus, to invoke federal jurisdiction, a plaintiff must “allege facts that demonstrate that he, and not the defendant, owns the patent rights on which the infringement suit is premised.” *Id.* at 861 (quotation omitted). The allegations of ownership must “have a plausible foundation” and not be “frivolous or insubstantial.” *Id.* (quotation omitted). Plaintiffs have failed on both counts. Thus,

⁵ The patent infringement allegations should alternatively be stricken for failure to properly plead a claim with the requisite specificity to put Defendants on notice of allegations against them. *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *Bender v. LG Elecs. U.S.A., Inc.*, No. C 09-02114 JF, 2010 WL 889541, at *5-6 (N.D. Cal. Mar. 11, 2010) (a patent infringement claim must include, “at a minimum, a brief description of what the patent at issue does, and an allegation that certain named and specifically identified products or product components also do what the patent does.”).

the patent infringement claims should be stricken against all Defendants. Moreover, because Defendants Apple Inc., Cisco Systems, Inc., Juniper Networks, Inc., Microsoft Corporation, Oracle Corporation, eBay Inc., PayPal, Inc., Google Inc., and Netflix, Inc. are not faced with any other allegations, the SAC should be stricken in its entirety as to these Defendants.

3. Plaintiffs' Requests to Rescind or Void Assignment of the '629 Patent are Time-Barred

Plaintiffs assert a myriad of claims to fabricate a basis for ownership of the '629 patent, specifically, that the DDI/Controlling Access Settlement—which granted all rights in the '629 Patent to Microsemi—should be voided, rescinded, or otherwise ignored by this Court. All such claims are time-barred.

Generally speaking, a claim accrues “when the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Lukovsky v. Cty. & Cnty. of San Francisco*, 535 F.3d 1044, 1048 (9th Cir. 2008). In the context of patent-related claims, the Supreme Court has held that upon issuance and recordation of a patent, “[c]onstructive notice of their existence goes thus to all the world.” *Sontag Chain Stores Co. Ltd. v. Nat’l Nut Co. of California*, 310 U.S. 281, 295 (1940) (noting that one with such “implied knowledge” would be subject to the same privileges and obligations as “would follow actual knowledge”); *see also Gen. Bedding Corp. v. Echevarria*, 947 F.2d 1395, 1398 (9th Cir. 1991) (constructive knowledge will be imputed from a patent’s issuance if a party “had enough information to warrant an investigation which, if reasonably diligent, would have led to discovery of [the cause of action]”); *IBM Corp. v. Zachariades*, No. C 91-20419-JW, 1993 WL 443409, at *2 (N.D. Cal. Oct. 27, 1993) (finding that “[t]he issuance of a patent gives a plaintiff constructive notice of its claims if the patent reveals information sufficient to alert a reasonable person of the need to inquire further.”).

Here, Plaintiffs themselves were *two of the four named inventors* listed on the face of the '629 Patent. This alone provided sufficient constructive notice to start the clock. The statute of limitations in California for breach of a written contract—such as the DDI/Controlling Access Settlement Agreement—is only 4 years. *See* Cal. Code Civ. Proc. § 337. Accordingly, because the

DDI/Controlling Access Settlement was signed in 1999, and the '629 Patent issued in 2002, the time for Plaintiffs to allege a breach of contract or otherwise challenge the Controlling Access Settlement has long passed.

Plaintiffs attempt to side-step this simple fact by contending they were not provided a copy of the DDI/Controlling Access Settlement Agreement until 12 years after its execution and were thus unable to enforce their rights. (*See* SAC ¶¶ 112-113.) Plaintiffs' contention necessarily fails because a contract is enforceable even if it is not fully executed. *Bernard v. Walkup*, 272 Cal. App. 2d 595, 602 (1969) ("It is well established that the receipt and acceptance by one party of a writing signed by the other only, and purporting to embody all the terms of a contract between the two, binds the acceptor as well as the signor to the terms of the writing."). Here, Plaintiffs do not deny that they received compensation under both contracts (*see, e.g.*, DDI/Controlling Access Agreement compensated Plaintiffs \$300,000 (Dkt. 123-6 at Section 3.4) and Datum/TTI Agreement paid Plaintiffs royalties (Dkt. 123-5 at Sections 3.1, 3.2, 3.15)), which evidences Microsemi's acceptance of the contracts' terms, thereby binding both Microsemi as the acceptor and Plaintiffs as the signors.

Plaintiffs also assert that their rights in Phase II Technologies are "the bulk of the claims (if not all) of those documented" in the '629 Patent. (SAC ¶ 4.) However, Plaintiffs have no rights in the '629 Patent and any claim that they own Phase II Technology within the '629 Patent is time-barred as they were well-aware (or should have been well-aware) that the '629 Patent issued in 2002. If they believed that the '629 Patent contained unauthorized portions of Phase II technology, then at the latest, Plaintiffs had until 2006 to bring their claims for breach.

Finally, Plaintiffs assert that "they have BOTH PATENT enforcement rights [created and supported in the original filing Co-Inventor Agreement and the Settlement]" and that voiding the DDI/Controlling Access Settlement would "trigger the contingency transfer language in the Co-Inventor Agreement making the original '992 Patent and the Amended 629 Patent property solely of PLAINTIFFS." (SAC ¶¶ 119, 124, 129.) To the contrary, the Co-Inventor Agreement was superseded and extinguished by the later signed DDI/Controlling Access Settlement Agreement.

(See Dkt. 123-6 at Sections 1.1, 1.4, 1.5, 3.7.) And as explained above, the DDI/Controlling Access Settlement Agreement recites that Microsemi owns all rights to the '629 Patent. Regardless, if Plaintiffs sought to void the DDI/Controlling Access Settlement, they should have filed a claim within four years of signing—by 2003—and are now time-barred.

Accordingly, Plaintiffs cannot now, or in the future, assert a valid claim for ownership of the '629 patent. As explained in the previous section, Plaintiffs' patent infringement claims should be stricken for lack of standing against all Defendants. Further, their patent infringement claims should be stricken with prejudice because Plaintiffs' claims for ownership of the '629 Patent are time-barred.

B. Plaintiffs' Claims For Copyright Infringement Should Be Stricken

Although the SAC does not include a formal count for copyright infringement, Plaintiffs suggest that their copyright "performance rights" have been infringed by their inclusion in unidentified IETF standards and the alleged implementation of those standards by other Defendants. (SAC ¶ 226; *see also id.* ¶¶ 160-61 (alleging violation of Section 102 of the Copyright Act).) The pleadings make clear, however, that these allegations are merely a backdoor attempt at asserting Plaintiffs' nonexistent patent rights. (*See, e.g.*, Dkt. 154 at 10:2-6 (Plaintiffs arguing that the SAC requests "an order establishing a series of performance rights under the Copyright Act for programs which will be run which contain software that infringes the claims taught by [the '629 Patent]).)

In order to state a claim for copyright infringement, a plaintiff must show ownership of a valid copyright and copying of original constituent elements of that work. *See Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881, 884 (9th Cir. 2005) (en banc); *see also San Jose Options, Inc. v. Ho Chung Yeh*, No. 14-00500, 2014 WL 1868738, at *3 (N.D. Cal. May 7, 2014). Although this Court specifically informed Plaintiffs that they must allege "ownership of a valid copyrighted work" to bring a copyright claim (Dkt. 109 at 4), the SAC does not identify a single copyrighted work that Plaintiffs own. As such, Plaintiffs cannot assert any claim sounding in copyright infringement.

1 **C. Plaintiffs’ Antitrust Claims Should Be Stricken**

2 Plaintiffs also claim that their inability to enforce their purported (but nonexistent) rights to
3 the ‘629 Patent somehow is the result of antitrust violations. However, the antitrust allegations in
4 the SAC—for violations of Sections 1 and 2 of the Sherman Act, and Section 4 of the Clayton Act
5 Section 4—contain nothing more than “a bare assertion of conspiracy,” which does “not suffice” to
6 establish an antitrust claim. *Twombly*, 550 U.S. at 556.

7 Moreover, Plaintiffs fail to allege an antitrust injury, which “is an element of all antitrust
8 suits,” *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1433, 1445 (9th Cir. 1995); *see also*
9 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 811 (9th Cir. 1988); *LiveUniverse, Inc. v. MySpace,*
10 *Inc.*, 304 F. App’x 554, 557 (9th Cir. 2008) (citation omitted); *see also Atl. Richfield Co. v. USA*
11 *Petroleum Co.*, 495 U.S. 328, 344 (1990). The Ninth Circuit in “[p]arsing the Supreme Court’s
12 definition of ‘antitrust injury,’ [has] held that antitrust injury consists of four elements: ‘(1)
13 unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the
14 conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent.’” *Somers*
15 *v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013) (citations omitted) (finding a lack of antitrust
16 injury to plaintiff based on Apple’s iTunes pricing).

17 Antitrust injury refers to “harm to the process of competition and consumer welfare, not
18 harm to individual competitors.” *LiveUniverse*, 304 F. App’x at 557. With respect to the second
19 element, the injury to plaintiff must be an injury to competition beyond the impact on the plaintiff
20 himself. *See McGlinchy*, 845 F.2d at 811-12 (“The antitrust laws were enacted for “the protection
21 of competition, not competitors.”) (citations omitted). As to the fourth element, “antitrust laws
22 protect the process of competition, and not the pursuits of any particular competitor . . .” *Cascade*
23 *Health Solutions v. PeaceHealth*, 515 F.3d 883, 901 (9th Cir. 2007) (emphasis added).

24 Here, the SAC fails to allege harm to competition—*i.e.*, reduced output or increased
25 prices—but rather only asserts personal economic loss. For example, “Defendants actively
26 conspired and waged an ongoing war to prevent plaintiffs from either recovering the actual
27
28

1 executed settlement agreement from Microsemi or being able to enforce it.” (SAC ¶ 82.)

2 Similarly, the SAC states that:

3 MICROSEMI has allegedly committed a number of Sherman Act
4 violations (Section One and Section Two) and several Clayton Act
5 (Section Four) violations in its alleged efforts to prevent PLAINTIFFS
6 from being able utilize their property and to dilute its Market Power in
7 violation of US Antitrust Law.

8 (SAC ¶ 148 (emphasis added); *see also* ¶¶ 59, 82, 85, 147-159.) Accordingly, Plaintiffs have not
9 pled the requisite antitrust injury.

10 In addition, an antitrust complaint must allege a plausible relevant product market in which
11 the anticompetitive effects of the challenged activity can be assessed. *See Jefferson Parish Hosp.*
12 *Dist. No. 2 v. Hyde*, 466 U.S. 2, 29 (1984). The SAC’s failure to allege any product market
13 whatsoever provides additional grounds for dismissing Plaintiffs’ antitrust claims.

14 The ISOC Defendants identified these deficiencies in their motion to dismiss the FAC (Dkt.
15 73 at 5; Dkt. 87 at 1-2), yet Plaintiffs have made no attempt to cure them. Instead, the SAC merely
16 adds equally specious “hub and spoke” allegations that still fail to demonstrate antitrust injury, a
17 plausible relevant product market, or any other elements of an antitrust claim.

18 Finally, even if Plaintiffs could properly allege antitrust claims against the Defendants, their
19 allegations that the “conspiracy” dates back to 1999, *see* SAC ¶¶ 59-62, demonstrates that the four-
20 year statute of limitations for such an action has long passed. *See* 15 U.S.C. § 15b.

21 Accordingly, Plaintiffs cannot assert antitrust claims against the Defendants.

22 **D. Plaintiffs’ Other Claims Also Fail**

23 Plaintiffs have asserted a claim against Microsemi for tortious interference, but plead none
24 of the elements required to state such a claim under California law. Microsemi’s arguments are set
25 forth in its motion to dismiss, Dkt. 153, and incorporated by reference herein.

26 In addition, although no formal count for fraud has been asserted against the ISOC
27 Defendants, Plaintiffs’ contention in response to the Order to Show Cause that the IETF has

engaged in “patent fraud” through the publication of copyrighted standards (Dkt. 159, at 8) is nonsensical and fails to meet the pleading standards for fraud under Rule 9(b). Moreover, Plaintiffs’ claim that they notified the IETF of their purported rights in 2009 (SAC ¶ 232) demonstrates that any claims for fraud are barred by the statute of limitations. *See* Cal. Code Civ. Proc. § 338(d).

Finally, the SAC references in passing various other causes action in relation to Defendants without formally asserting such causes of action or stating any of the necessary elements. Accordingly, to the extent the Court construes the SAC as making additional allegations against Defendants, those allegations are deficient and should be stricken.

E. Dismissal Should Be With Prejudice As Amendment Would Be Futile

Given the deficiencies outlined above, and Plaintiffs’ previous failed state and federal litigations relating to generally these same issues, no amount of re-pleading can cure the SAC’s defects. *See Duetsche v. Turner Corp.*, 324 F. 3d 692, 718 n.20 (9th Cir. 2003) (noting that granting leave to amend is futile where the claim would be barred by the statute of limitations). Where, as here, amendment would be futile, there is no need to prolong litigation and the SAC should be stricken without leave to amend. *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002).

The Ninth Circuit only permits amended pleadings that allege “facts consistent with the challenged pleadings.” *Reddy v. Litton Indus.*, 912 F.2d 291, 296-97 (9th Cir. 1990). Plaintiffs have admitted in their previous pleadings and in motion practice that they assigned the ’629 Patent to Microsemi. They should not be permitted to file a third amended complaint asserting infringement of this patent because they cannot allege standing without contradicting their earlier statements. *Id.* (affirming dismissal with prejudice because “[i]t would not be possible for [plaintiff] to amend his complaint ... without contradicting any of the allegations of his original complaint”).

Furthermore, “[i]t is well established that a court may dismiss an entire complaint *with prejudice* where plaintiffs have failed to plead properly after ‘repeated opportunities.’” *Destfino v.*

1 *Reiswig*, 630 F.3d 952, 959 (9th Cir. 2011) (citing *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir.
2 1993); *Semegen v. Weidner*, 780 F.2d 727, 730–31 (9th Cir. 1985) (dismissing with prejudice
3 second amended complaint after district court provided detailed instructions on how to remedy
4 deficiencies and plaintiffs failed to comply). Here, the Court noted the major deficiencies in
5 Plaintiffs' FAC with the caveat that Plaintiffs were:

6 to file a proper second amended complaint. It must cure the
7 deficiencies identified herein. Failure to do so may well result in
8 dismissal with prejudice. Plaintiffs must plead their best and most
9 plausible case and further opportunities to plead will not likely be
10 allowed.

11 (Dkt. 109 at 4:27-5:2.) Plaintiffs failed to cure the noted deficiencies, *see* Dkt. 109 at 4:1-20, and
12 should not be given another opportunity.

13 **V. CONCLUSION**

14 For all the reasons set forth above, Defendants respectfully request the Court dismiss
15 Plaintiffs' Second Amended Complaint (Dkt. 112) as against Defendants with prejudice.

16
17 Dated: December 19, 2014

Respectfully submitted,

LEE TRAN & LIANG LLP

19 By: /s/ Eugene L. Hahm
20 Eugene L. Hahm

21 Attorneys for Defendants
22 MICROSEMI CORP., ORACLE CORP.
and MICROSOFT CORP.

23 Dated: December 19, 2014

O'MELVENY & MYERS LLP

24 DAVID R. EBERHART (S.B. #195474)
25 deberhart@omm.com
26 ALEXANDER B. PARKER (S.B. #264705)
aparker@omm.com
27 Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
28 Telephone: (415) 984-8700

Facsimile: (415) 984-8701

By: /s/ Alexander B. Parker
Alexander B. Parker

Attorneys for Defendant
APPLE INC.

Dated: December 19, 2014

IRELL & MANELLA LLP

Jonathan S. Kagan (SBN 166039)
(jkagan@irell.com)
Christine M. Woodin (SBN 295023)
(cwoodin@irell.com)
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

By: /s/ Christine M. Woodin
Christine M. Woodin

Attorneys for Defendant
JUNIPER NETWORKS, INC.

Dated: December 19, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP

JASON D. RUSSELL (CA SBN 169219)
jason.russell@skadden.com
300 South Grand Avenue
Los Angeles, California 90071-3144
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

By: /s/ Jason D. Russell
Jason D. Russell

Attorneys for Defendants
THE INTERNET SOCIETY AND INTERNET
ENGINEERING TASK FORCE

Dated: December 19, 2014

WINSTON & STRAWN LLP

DAVID S. BLOCH (SBN: 184530)
dbloch@winston.com
JAMES C. LIN (SBN: 271673)

1 jalin@winston.com
2 3300 Hillview Avenue
3 Palo Alto, CA 94304-1203
4 Telephone: (650) 858-6500
5 Facsimile: (650) 858-6550

6 By: /s/ James C. Lin
7 James C. Lin

8 Attorneys for Defendant
9 CISCO SYSTEMS, INC.

10 Dated: December 19, 2014

11 SACKS, RICKETTS & CASE LLP

12 STEPHEN CHIARI (SBN 221410)
13 schiari@srclaw.com
14 E. CRYSTAL LOPEZ (SBN 296297)
15 clopez@srclaw.com
16 177 Post Street, Suite 650
17 San Francisco, CA 94108
18 Telephone: 415-549-0580
19 Facsimile: 415-549-0540

20 By: /s/ E. Crystal Lopez
21 E. CRYSTAL LOPEZ

22 Attorneys for Defendants
23 eBay Inc. and PayPal, Inc.

24 Dated: December 19, 2014

25 WILSON SONSINI GOODRICH & ROSATI
26 Professional Corporation
27 Stefanie E. Shanberg (SBN 206717)
28 sshanberg@wsgr.com
Eugene Marder (SBN 275762)
emarder@wsgr.com
One Market Plaza
Spear Tower, Suite 3300
San Francisco, California 94105
Telephone: (415) 947-2000
Facsimile: (415) 947-2099

By: /s/ Stefani E. Shanberg
Stefani E. Shanberg

Attorneys for Defendants
GOOGLE INC. and NETFLIX, INC.

EXHIBIT J

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

TODD S. GLASSEY and MICHAEL E. MCNEIL,

Plaintiffs,

No. C 14-03629 WHA

v.

MICROSEMI INC, US GOVERNMENT,
PRESIDENT OF THE UNITED STATES,
STATE OF CALIFORNIA, GOVERNOR BROWN,
THE IETF AND THE INTERNET SOCIETY,
APPLE INC., CISCO INC., EBAY INC.,
PAYPAL INC., GOOGLE INC.,
JUNIPER NETWORKS, MICROSOFT CORP.,
NETFLIX INC., ORACLE INC., MARK HASTINGS,
ERIK VAN DER KAAY, AND THALES GROUP,
and "UNSERVED" DOES,

Defendants.

**ORDER GRANTING MOTIONS
TO DISMISS, STRIKING
SECOND AMENDED
COMPLAINT, DENYING ALL
PENDING MOTIONS FOR
SUMMARY JUDGMENT, AND
VACATING HEARINGS**

Two *pro se* plaintiffs seek to obtain millions of dollars in damages for the "largest fraud loss in history" based on allegations they say "sounded Looney originally." Nevertheless, they have sued more than twenty defendants, including the United States. Plaintiffs claim to own the intellectual property rights to "a part of virtually all networking systems in use globally" and that their rights "control most online commerce in the US today."

A week after filing their second amended complaint, plaintiffs filed six "dispositive" motions, including a motion to take a multi-trillion dollar loss on their 2014 taxes and a motion to assign themselves patent rights they admit they do not own.

Having reviewed the more than 1,000 pages larded in the record by plaintiffs, this order rules as follows. For the reasons stated herein, all claims are **DISMISSED WITH PREJUDICE**.

The motions to dismiss are **GRANTED**. All of plaintiffs' motions are **DENIED**.

*

*

*

1 *Pro se* plaintiffs are Todd Glassey and Michael McNeil.* Defendants include the United
2 States, the “State of California,” individuals, and many technology companies — including,
3 Apple Inc., Cisco Inc., eBay Inc., Google Inc., Juniper Networks Inc., Microsemi Inc., Microsoft
4 Corp., Netflix Inc., Oracle Corp., PayPal Inc., and more. The United States has appeared and at
5 least seven law firms were retained for this matter.

6 In essence, to the extent comprehensible, the eighty-page second amended complaint
7 alleged that plaintiffs assigned their intellectual property rights to an entity called Datum Inc. in
8 1999 via two settlement agreements. Defendant Microsemi Corp. is now the assignee of the
9 patents referenced in the second amended complaint.

10 After the settlement agreements were signed — approximately seven years later —
11 plaintiffs commenced a lawsuit in Santa Cruz Superior Court, alleging malpractice, breach of
12 contract, and other claims arising from the settlement agreements. Plaintiffs then voluntarily
13 dismissed the lawsuit. *McNeil, et al. v. Symmetricom, Inc.*, No. CV-165643 (Santa Cruz Sup.
14 Ct.).

15 Plaintiffs subsequently commenced a new lawsuit in federal court. *Glassey, et al. v.*
16 *Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (Judge Nat Cousins). That action was
17 voluntarily dismissed as well, after an order to show cause regarding subject-matter jurisdiction
18 was issued.

19 *Pro se* plaintiffs later commenced this action. Their motion for a “three-judge panel” was
20 denied. Six defendants then moved to dismiss and in an October 2014 order, the first amended
21 complaint was stricken. Plaintiffs were given one more chance to plead their best and most
22 plausible case. They were warned that failure to cure the identified deficiencies could result in
23 dismissal with prejudice (Dkt. No. 109). The initial case management conference was vacated.

24
25
26 * Mr. Glassey has commenced several actions in our district. *See, e.g., Glassey v. Amano Corp., et al.*,
27 No. 04-05142 (N.D. Cal. Bankr.) (Judge Marilyn Morgan); *Glassey v. National Institute of Standards &*
28 *Technologies, et al.*, No. 5:04-cv-02522-JW (N.D. Cal.) (Judge James Ware); *Glassey v. Amano Corporation, et*
al., No. 5:05-cv-01604-RMW (N.D. Cal.) (Judge Ronald Whyte); *Glassey v. D-Link Corporation*,
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1 An eighty-page second amended complaint was then filed. A week later, plaintiffs filed
2 six motions. Defendant Internet Society filed a motion to dismiss. Both sides were then invited
3 to show cause regarding whether the second amended complaint should (or should not) be
4 stricken. Defendant Microsemi, Inc. then filed a motion to dismiss.

5 In response to the order to show cause, plaintiffs, the United States, and the other
6 defendants (who have appeared) each filed briefs. This order rules as follows.

7 **1. RENEWED MOTION FOR THREE-JUDGE PANEL.**

8 Plaintiffs' motion is **DENIED**. A prior order denied the original motion for a three-judge
9 panel (Dkt. No. 70). Now, plaintiffs move again for a three-judge panel. As stated before, no
10 three-judge panel is required.

11 **2. MOTION TO QUASH FISA OR RELATED WARRANTS.**

12 Plaintiffs' motion is **DENIED**. Plaintiffs move to quash "any existing Intelligence or
13 Internationally issued FISA or Intelligence Warrants" concerning various "intellectual property."
14 Plaintiffs do not know if any warrants exist, they forthrightly admit. They instead speculate that
15 "treason" has occurred and that there is a "seditious conspiracy" by various foreign governments
16 to refuse to open fraud investigations, and that there "could" be interference with potential
17 attorney-client relationships. The United States filed an opposition brief (Dkt. No. 158).

18 No motion to quash "FISA or related warrants" could possibly be justified on this record.
19 The Supreme Court has stated in the FISA context that a mere speculative chain of possibilities
20 does not suffice to establish Article III standing. *Clapper v. Amnesty International USA*, — U.S.
21 —, 133 S. Ct. 1138, 1150 (2013). Plaintiffs' theory, to the extent comprehensible, is farfetched.
22 Their contention that it is possible that FISA warrants may exist and that those warrants (if they
23 exist) were issued to an unidentified "attorney" which then could create a "conflict of interest"
24 that offends the Constitution is rejected.

25 **3. MOTION FOR PARTIAL SUMMARY JUDGMENT RE "FRAUD LOSS."**

26 Plaintiffs' motion is **DENIED**. Plaintiffs move to take a multi-trillion dollar "fraud loss" on
27 their 2014 taxes based on "loss of access" to their "intellectual property rights" based on
28 "abandoned" patent applications allegedly filed in foreign countries. Plaintiffs point to online

“printouts” from patent offices in Europe, South Africa, Japan, Brazil, Korea, Canada, and Australia. Plaintiffs’ requests for judicial notice, which were not properly authenticated, are **DENIED**.

The United States responds that plaintiffs’ motion should be denied because (1) there is no jurisdiction; (2) there is no evidence the United States waived its sovereign immunity; (3) plaintiffs’ motion was procedurally improper because it was filed before any defendant answered the complaint; and (4) the bare motion lacked any sworn and authenticated support.

None of the relief demanded by plaintiffs is granted. This Court lacks jurisdiction over the “tax” matter plaintiffs brought. Since the United States Attorney is already aware of this motion, it will not be referred to their office. The United States Attorney may forward a copy of plaintiffs’ filings and this order to the Internal Revenue Service and any other agencies as appropriate. Plaintiffs’ motion to take a “fraud loss” on their 2014 taxes is **DENIED**.

4. MOTION TO VOID THE DDI AND TTI SETTLEMENTS.

Plaintiffs state that docket number 123 “replaces” docket number 118. Nevertheless, both briefs have been read.

Plaintiffs move to award themselves “full custody” of two United States patents by moving to “void” the settlement agreements they signed more than fifteen years ago. In short (based on the unauthenticated settlement agreements filed by plaintiffs), in the “DDI settlement,” in exchange for \$300,000, plaintiffs agreed to assign all rights, title, and interest in the “Controlling Access Patent” and patent application to Datum, Inc. Plaintiffs also granted Datum a non-exclusive, irrevocable worldwide license to the “Phase II Technology and derivative thereof” with rights to sublicense (Dkt. No. 121-3). In the “TTI settlement,” in exchange for royalties for the years 2000 through 2002, plaintiffs agreed to disclaim any ownership in or rights to the “Protected Technology,” a term defined at length in the settlement agreement (Dkt. No. 121-2).

To “void” these two settlement agreements, plaintiffs reference two decisions: *Gellman v. Telular Corp.*, 449 F. App’x 941, 945 (Fed. Cir. 2011) and *Talbot v. Quaker-State Oil Ref. Co.*, 104 F.2d 967, 969 (3d Cir. 1939). Plaintiffs’ reliance on *Gellman* and *Talbot* is misplaced.

1 In *Gellman* (an unpublished decision), the Federal Circuit affirmed dismissal for lack of
2 standing. Plaintiff's late husband was a named co-inventor of the asserted patent. Because all of
3 the legal owners of the asserted patent were not parties to the action and plaintiff's evidence of
4 sole ownership was "thin and unsupportive," dismissal was proper. Here too, plaintiffs lack
5 standing to assert patent infringement. (More on this below.)

6 In *Talbot* (a non-binding decision from 1939), the Third Circuit affirmed dismissal
7 because of *res judicata*. The Supreme Court of Pennsylvania had previously held that one joint
8 owner of a patent had the power to grant a license to the patent without the consent of the other
9 co-owner. That judgment was binding in the later-filed federal lawsuit. Neither *Gellman* nor
10 *Talbot* support "voiding" the two settlement agreements here.

11 Defendant Microsemi states that it is the current assignee, the "sole owner and the only
12 party permitted to enforce the two patents at issue" (Opp. 1). It argues that plaintiffs' motion
13 should be denied because (1) plaintiffs' claims are barred by the four-year statute of limitations;
14 (2) the second amended complaint relied on the validity of the two settlement agreements
15 plaintiffs now seek to "void;" (3) no rescission claim was pled in the second amended complaint;
16 and (4) plaintiffs' motion was procedurally improper because it was filed before any defendant
17 answered the complaint and before the initial case management conference (Dkt. No. 148).

18 No reasonable juror could find that the settlement agreements plaintiffs signed in 1999
19 should be "voided" based on the record presented. Indeed, no notice of this "claim for relief" was
20 provided in the second amended complaint and none of plaintiffs arguments is persuasive. Even
21 if plaintiffs never received a "countersigned copy" of the settlement agreements for "12 and 3/4
22 years," plaintiffs sued to enforce those agreements back in 2009. The statute of limitations has
23 passed.

24 Accordingly, plaintiffs' motion is **DENIED**. To the extent not relied upon, Microsemi's
25 requests for judicial notice are **DENIED AS MOOT**.

26 **5. MOTION FOR PARTIAL SUMMARY JUDGMENT OF PATENT INVENTORSHIP.**

27 Plaintiffs' motion is **DENIED**. Plaintiffs move to add themselves as named inventors to a
28 patent and to "reassign" that patent and "all published instances of it" to themselves. As "proof,"

1 plaintiffs argue that the “existence” of their settlement agreements (the very same agreements
2 they sought to “void” above) purportedly supports removing the named inventors and making
3 plaintiffs the sole inventors.

4 Defendant Microsemi argues that (1) plaintiffs’ inventorship claim is barred by laches
5 since the relevant patent issued in 2002; (2) there is no clear and convincing evidence that
6 plaintiffs contributed to conception of the claimed invention; (3) plaintiffs provided no proof that
7 “all published instances” of the patent should be “reassigned” to them; and (4) plaintiffs’ motion
8 was procedurally improper because it was filed before any defendant answered the complaint and
9 before the initial case management conference (Dkt. No. 156).

10 There is no evidence in the record, let alone clear and convincing evidence, supporting the
11 relief demanded by plaintiffs. Plaintiffs’ motion is **DENIED**. To the extent not relied upon,
12 Microsemi’s requests for judicial notice are **DENIED AS MOOT**.

13 **6. MOTION FOR PARTIAL SUMMARY JUDGMENT RE “PERFORMANCE RIGHTS.”**

14 Plaintiffs’ Motion is **DENIED**. To the extent comprehensible, plaintiffs seek “full
15 PERFORMANCE RIGHTS STANDING against the execution of any program derived from an
16 IETF Standard containing Plaintiffs’ PHASE-II IPs” (Br. 2). Plaintiffs argue that the Internet
17 Engineering Task Force (“IETF”) is a “rogue state,” who published standards used by technology
18 companies, including Apple, Google, Cisco, Microsoft, Oracle, Juniper Networks, and so forth.
19 Plaintiffs seek copyright protection over the IETF’s publications.

20 Defendant Internet Society is a non-profit corporation and the IETF is an “organized
21 activity” within it — not a legal entity — defendant clarifies. In any event, Internet Society
22 argues that no relief can be provided for plaintiffs’ bare motion, which was unsupported by
23 specific sworn facts. In pertinent part, Internet Society argues that (1) the second amended
24 complaint failed to allege ownership in any identifiable copyrighted work and (2) plaintiffs failed
25 to identify any specific publication or standard promulgated by defendant. The “narratives”
26 plaintiffs larded into the record in no way support the relief demanded, says defendant. Internet
27 Society also argues that plaintiffs should be ordered to show cause why they should not be
28

1 declared a vexatious litigant. (No motion to declare plaintiffs a vexatious litigant has been
2 brought.)

3 None of the relief demanded by plaintiffs is warranted by this record. Plaintiffs have not
4 shown any specific sworn evidence that they “own” the Internet Society’s publications.
5 Plaintiffs’ motion is **DENIED**.

6 **7. DISMISSAL OF THE SECOND AMENDED COMPLAINT.**

7 Months have passed and plaintiffs have utterly failed to file a pleading that states a
8 plausible claim. None of plaintiffs’ pleadings (Dkt. Nos. 1, 6, 112) satisfied *Ashcroft v. Iqbal*,
9 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
10 Plaintiffs are now on their second amended complaint, after their prior pleading was stricken for a
11 multitude of defects. At that time, plaintiffs were warned that failure to plead their best and most
12 plausible case could result in dismissal with prejudice (Dkt. No. 109).

13 It is now hopeless to continue with this lawsuit. There are too many fundamental
14 problems with plaintiffs’ pleading so only a few will be called out now. *First*, plaintiffs have
15 failed to establish that the United States has waived its sovereign immunity, or that they have
16 standing to sue the United States. *Second*, plaintiffs lack standing to assert patent infringement
17 for even they concede that they do not own the asserted patents. *Third*, plaintiffs’ claims are
18 time-barred. Most, if not all, of plaintiffs’ claims date back to the 1990s and early 2000s. The
19 statute of limitations has long passed. *Fourth*, the second amended complaint failed to allege
20 antitrust injury.


21 Having considered plaintiffs’ second amended complaint, plaintiffs’ oppositions to the
22 motions to dismiss, and plaintiffs’ response to the order to show cause, this order finds that
23 granting leave to amend would be futile. Plaintiffs have failed to cure the multitude of defects
24 previously identified, despite having had an opportunity to review the then-pending six motions
25 to dismiss and the prior order striking the complaint. Twenty defendants, including the United
26 States, and seven law firms should not be dragged into incurring the expense of this hopeless and
27 utterly frivolous lawsuit. Accordingly, defendants’ motions to dismiss and to strike the second
28 amended complaint are **GRANTED**.

CONCLUSION

For the reasons stated herein, all of plaintiffs' motions are **DENIED**. To the extent not relied upon, all of plaintiffs' requests for judicial notice are **DENIED**. The second amended complaint is hereby **STRICKEN**. The entire action is **DISMISSED WITH PREJUDICE**. All hearings herein (*i.e.*, January 8, 15, and 29) are hereby **VACATED**. Judgment shall be entered in a separate order.

IT IS SO ORDERED.

Dated: December 29, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT K

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

TODD S. GLASSEY and MICHAEL E. MCNEIL,

Plaintiffs,

No. C 14-03629 WHA

v.

MICROSEMI INC, US GOVERNMENT,
PRESIDENT OF THE UNITED STATES,
STATE OF CALIFORNIA, GOVERNOR BROWN,
THE IETF AND THE INTERNET SOCIETY,
APPLE INC., CISCO INC., EBAY INC.,
PAYPAL INC., GOOGLE INC.,
JUNIPER NETWORKS, MICROSOFT CORP.,
NETFLIX INC., ORACLE INC., MARK HASTINGS,
ERIK VAN DER KAAY, AND THALES GROUP,
and "UNSERVED" DOES,

JUDGMENT

Defendants.

For the reasons stated in the accompanying order granting motions to dismiss and striking second amended complaint, **FINAL JUDGMENT IS HEREBY ENTERED** in favor of defendants and against plaintiffs. The Clerk **SHALL CLOSE THE FILE**.

IT IS SO ORDERED.

Dated: December 29, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT L

Name Todd S. Glassey In Pro Se
 Address 305 McGaffigan Mill Road
 City, State, Zip Boulder Creek CA 95006
 Phone 408-890-7321
 Fax _____
 E-Mail tglassey@earthlink.net
☐ FPD ☐ Appointed ☐ CJA ☒ Pro Per ☐ Retained

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Todd S. Glassey, In Pro Se, and Micheal E. McNeil In
 Pro Se,

PLAINTIFF(S),

v.

Microsemi Inc et Al.

DEFENDANT(S).

CASE NUMBER:

3:14-CV-03629-WHA

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Todd S. Glassey, hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]
☐ Conviction and Sentence
☐ Sentence Only (18 U.S.C. 3742)
☐ Pursuant to F.R.Cr.P. 32(j)(2)
☐ Interlocutory Appeals
☐ Sentence imposed:

☐ Bail status:

Civil Matter

- ☒ Order (specify):
 Denying Motion to Appoint 3 Judge
 Panel
☒ Judgment (specify):
 Dismissal with Prejudice
☒ Other (specify):
 (3 Judge Panel Motion should have been
 heard prior to all others, and granted
 since it affects the Trial Structure and
 Appellate model therein.)

Imposed or Filed on 12-29-2014. Entered on the docket in this action on 12-29-2014.

A copy of said judgment or order is attached hereto.

12-29-2014
 Date

/s/ Todd S. Glassey
 Signature
☒ Appellant/ProSe ☐ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

EXHIBIT M



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

December 31, 2014

No.: 14-17574
D.C. No.: 3:14-cv-03629-WHA
Short Title: Todd Glassey, et al v. Microsemi, Inc., et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Payment of the \$505 docketing and filing fees is past due. Failure to correct this deficiency **within 14 days** will result in the dismissal of this case for failure to prosecute. See 9th Cir. R. 42-1. The fee is payable to the District Court.

Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 31 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TODD GLASSEY,

Plaintiff - Appellant,

and

MICHAEL EDWARD MCNEIL,

Plaintiff,

v.

MICROSEMI, INC.; UNITED STATES
GOVERNMENT; PRESIDENT OF
THE UNITED STATES; STATE OF
CALIFORNIA; EDMUND JERRY
BROWN, Governor of the State of
California; INTERNET
ENGINEERING TASK FORCE; THE
INTERNET SOCIETY; APPLE, INC.;
CISCO, INC.; EBAY, INC.; PAYPAL,
INC.; GOOGLE, INC.; JUNIPER
NETWORKS, INC.; MICROSOFT
CORPORATION; NETFLIX, INC.;
ORACLE CORPORATION; MARK
HASTINGS; ERIK VAN DER KAAY;
THALES GROUP; DOES, "Unserved",

Defendants - Appellees.

No. 14-17574

D.C. No. 3:14-cv-03629-WHA
U.S. District Court for Northern
California, San Francisco

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Wed., April 8, 2015

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

Fri., May 8, 2015

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

The optional appellant's reply brief shall be filed and served within fourteen days of service of the appellees' brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Ruben Talavera
Deputy Clerk

EXHIBIT N

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

Plaintiff: **Glassey and McNeil In Pro Se**

vs.

Civil Action No. **3:14-CV-03629**

Defendant: **Microsemi Inc, et Al.**

CIVIL NOTICE OF APPEAL

Notice is hereby given this ____ day of January 20¹⁵, that

Glassey and McNeil do hereby Amend the original Notice of Appeal

hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the
judgement of this court entered on the 29 day of Dec, 20¹⁴, in

favor of Defendants (and US Government)

against said Claims of Intellectual Property Fraud Losses and related matters

Todd S. Glassey, In Pro Se

Attorney or Pro Se Litigant

(Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure a notice of appeal in a civil action must be filed within 30 days after the date of entry of judgment or 60 days if the United States or officer or agency is a party)

EXHIBIT O

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Name _____
 Address _____
 City, State, Zip _____
 Phone _____
 Fax _____
 E-Mail _____
☐ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☐ Retained

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 NORTHERN DISTRICT OF CALIFORNIA**

CASE NUMBER: _____

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DEFENDANT(S).

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☐ Sentence imposed:

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Civil Matter

- ☐ Order (specify): _____
☐ Judgment (specify): _____
☐ Other (specify): _____

Imposed or Filed on _____. Entered on the docket in this action on _____.

A copy of said judgment or order is attached hereto.

 Date

 Signature

☐ Appellant/ProSe ☐ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

IN THE UNITED STATES DISTRICT COURT
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Plaintiffs,

No. C 14-03629 WHA

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JUNIPER NETWORKS, MICROSOFT CORP.,
NETFLIX INC., ORACLE INC., MARK HASTINGS,
ERIK VAN DER KAAY, AND THALES GROUP,
and "UNSERVED" DOES,

Defendants.

**ORDER GRANTING MOTIONS
TO DISMISS, STRIKING
SECOND AMENDED
COMPLAINT, DENYING ALL
PENDING MOTIONS FOR
SUMMARY JUDGMENT, AND
VACATING HEARINGS**

Two *pro se* plaintiffs seek to obtain millions of dollars in damages for the "largest fraud loss in history" based on allegations they say "sounded Looney originally." Nevertheless, they have sued more than twenty defendants, including the United States. Plaintiffs claim to own the intellectual property rights to "a part of virtually all networking systems in use globally" and that their rights "control most online commerce in the US today."

A week after filing their second amended complaint, plaintiffs filed six "dispositive" motions, including a motion to take a multi-trillion dollar loss on their 2014 taxes and a motion to assign themselves patent rights they admit they do not own.

Having reviewed the more than 1,000 pages larded in the record by plaintiffs, this order rules as follows. For the reasons stated herein, all claims are **DISMISSED WITH PREJUDICE**.

The motions to dismiss are **GRANTED**. All of plaintiffs' motions are **DENIED**.

*

*

*

1 *Pro se* plaintiffs are Todd Glassey and Michael McNeil.* Defendants include the United
2 States, the “State of California,” individuals, and many technology companies — including,
3 Apple Inc., Cisco Inc., eBay Inc., Google Inc., Juniper Networks Inc., Microsemi Inc., Microsoft
4 Corp., Netflix Inc., Oracle Corp., PayPal Inc., and more. The United States has appeared and at
5 least seven law firms were retained for this matter.

6 In essence, to the extent comprehensible, the eighty-page second amended complaint
7 alleged that plaintiffs assigned their intellectual property rights to an entity called Datum Inc. in
8 1999 via two settlement agreements. Defendant Microsemi Corp. is now the assignee of the
9 patents referenced in the second amended complaint.

10 After the settlement agreements were signed — approximately seven years later —
11 plaintiffs commenced a lawsuit in Santa Cruz Superior Court, alleging malpractice, breach of
12 contract, and other claims arising from the settlement agreements. Plaintiffs then voluntarily
13 dismissed the lawsuit. *McNeil, et al. v. Symmetricom, Inc.*, No. CV-165643 (Santa Cruz Sup.
14 Ct.).

15 Plaintiffs subsequently commenced a new lawsuit in federal court. *Glassey, et al. v.*
16 *Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (Judge Nat Cousins). That action was
17 voluntarily dismissed as well, after an order to show cause regarding subject-matter jurisdiction
18 was issued.

19 *Pro se* plaintiffs later commenced this action. Their motion for a “three-judge panel” was
20 denied. Six defendants then moved to dismiss and in an October 2014 order, the first amended
21 complaint was stricken. Plaintiffs were given one more chance to plead their best and most
22 plausible case. They were warned that failure to cure the identified deficiencies could result in
23 dismissal with prejudice (Dkt. No. 109). The initial case management conference was vacated.

24
25
26 * Mr. Glassey has commenced several actions in our district. See, e.g., *Glassey v. Amano Corp., et al.*,
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28 *Technologies, et al.*, No. 5:04-cv-02522-JW (N.D. Cal.) (Judge James Ware); *Glassey v. Amano Corporation, et*
al., No. 5:05-cv-01604-RMW (N.D. Cal.) (Judge Ronald Whyte); *Glassey v. D-Link Corporation*,
No. 4:06-cv-06128-PJH (N.D. Cal.) (Judge Phyllis Hamilton); *Glassey, et al. v. Symmetricom, Inc.*,
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1 An eighty-page second amended complaint was then filed. A week later, plaintiffs filed
2 six motions. Defendant Internet Society filed a motion to dismiss. Both sides were then invited
3 to show cause regarding whether the second amended complaint should (or should not) be
4 stricken. Defendant Microsemi, Inc. then filed a motion to dismiss.

5 In response to the order to show cause, plaintiffs, the United States, and the other
6 defendants (who have appeared) each filed briefs. This order rules as follows.

7 **1. RENEWED MOTION FOR THREE-JUDGE PANEL.**

8 Plaintiffs' motion is **DENIED**. A prior order denied the original motion for a three-judge
9 panel (Dkt. No. 70). Now, plaintiffs move again for a three-judge panel. As stated before, no
10 three-judge panel is required.

11 **2. MOTION TO QUASH FISA OR RELATED WARRANTS.**

12 Plaintiffs' motion is **DENIED**. Plaintiffs move to quash "any existing Intelligence or
13 Internationally issued FISA or Intelligence Warrants" concerning various "intellectual property."
14 Plaintiffs do not know if any warrants exist, they forthrightly admit. They instead speculate that
15 "treason" has occurred and that there is a "seditious conspiracy" by various foreign governments
16 to refuse to open fraud investigations, and that there "could" be interference with potential
17 attorney-client relationships. The United States filed an opposition brief (Dkt. No. 158).

18 No motion to quash "FISA or related warrants" could possibly be justified on this record.
19 The Supreme Court has stated in the FISA context that a mere speculative chain of possibilities
20 does not suffice to establish Article III standing. *Clapper v. Amnesty International USA*, — U.S.
21 —, 133 S. Ct. 1138, 1150 (2013). Plaintiffs' theory, to the extent comprehensible, is farfetched.
22 Their contention that it is possible that FISA warrants may exist and that those warrants (if they
23 exist) were issued to an unidentified "attorney" which then could create a "conflict of interest"
24 that offends the Constitution is rejected.

25 **3. MOTION FOR PARTIAL SUMMARY JUDGMENT RE "FRAUD LOSS."**

26 Plaintiffs' motion is **DENIED**. Plaintiffs move to take a multi-trillion dollar "fraud loss" on
27 their 2014 taxes based on "loss of access" to their "intellectual property rights" based on
28 "abandoned" patent applications allegedly filed in foreign countries. Plaintiffs point to online

“printouts” from patent offices in Europe, South Africa, Japan, Brazil, Korea, Canada, and Australia. Plaintiffs’ requests for judicial notice, which were not properly authenticated, are **DENIED**.

The United States responds that plaintiffs’ motion should be denied because (1) there is no jurisdiction; (2) there is no evidence the United States waived its sovereign immunity; (3) plaintiffs’ motion was procedurally improper because it was filed before any defendant answered the complaint; and (4) the bare motion lacked any sworn and authenticated support.

None of the relief demanded by plaintiffs is granted. This Court lacks jurisdiction over the “tax” matter plaintiffs brought. Since the United States Attorney is already aware of this motion, it will not be referred to their office. The United States Attorney may forward a copy of plaintiffs’ filings and this order to the Internal Revenue Service and any other agencies as appropriate. Plaintiffs’ motion to take a “fraud loss” on their 2014 taxes is **DENIED**.

4. MOTION TO VOID THE DDI AND TTI SETTLEMENTS.

Plaintiffs state that docket number 123 “replaces” docket number 118. Nevertheless, both briefs have been read.

Plaintiffs move to award themselves “full custody” of two United States patents by moving to “void” the settlement agreements they signed more than fifteen years ago. In short (based on the unauthenticated settlement agreements filed by plaintiffs), in the “DDI settlement,” in exchange for \$300,000, plaintiffs agreed to assign all rights, title, and interest in the “Controlling Access Patent” and patent application to Datum, Inc. Plaintiffs also granted Datum a non-exclusive, irrevocable worldwide license to the “Phase II Technology and derivative thereof” with rights to sublicense (Dkt. No. 121-3). In the “TTI settlement,” in exchange for royalties for the years 2000 through 2002, plaintiffs agreed to disclaim any ownership in or rights to the “Protected Technology,” a term defined at length in the settlement agreement (Dkt. No. 121-2).

To “void” these two settlement agreements, plaintiffs reference two decisions: *Gellman v. Telular Corp.*, 449 F. App’x 941, 945 (Fed. Cir. 2011) and *Talbot v. Quaker-State Oil Ref. Co.*, 104 F.2d 967, 969 (3d Cir. 1939). Plaintiffs’ reliance on *Gellman* and *Talbot* is misplaced.

1 In *Gellman* (an unpublished decision), the Federal Circuit affirmed dismissal for lack of
2 standing. Plaintiff's late husband was a named co-inventor of the asserted patent. Because all of
3 the legal owners of the asserted patent were not parties to the action and plaintiff's evidence of
4 sole ownership was "thin and unsupportive," dismissal was proper. Here too, plaintiffs lack
5 standing to assert patent infringement. (More on this below.)

6 In *Talbot* (a non-binding decision from 1939), the Third Circuit affirmed dismissal
7 because of *res judicata*. The Supreme Court of Pennsylvania had previously held that one joint
8 owner of a patent had the power to grant a license to the patent without the consent of the other
9 co-owner. That judgment was binding in the later-filed federal lawsuit. Neither *Gellman* nor
10 *Talbot* support "voiding" the two settlement agreements here.

11 Defendant Microsemi states that it is the current assignee, the "sole owner and the only
12 party permitted to enforce the two patents at issue" (Opp. 1). It argues that plaintiffs' motion
13 should be denied because (1) plaintiffs' claims are barred by the four-year statute of limitations;
14 (2) the second amended complaint relied on the validity of the two settlement agreements
15 plaintiffs now seek to "void;" (3) no rescission claim was pled in the second amended complaint;
16 and (4) plaintiffs' motion was procedurally improper because it was filed before any defendant
17 answered the complaint and before the initial case management conference (Dkt. No. 148).

18 No reasonable juror could find that the settlement agreements plaintiffs signed in 1999
19 should be "voided" based on the record presented. Indeed, no notice of this "claim for relief" was
20 provided in the second amended complaint and none of plaintiffs arguments is persuasive. Even
21 if plaintiffs never received a "countersigned copy" of the settlement agreements for "12 and 3/4
22 years," plaintiffs sued to enforce those agreements back in 2009. The statute of limitations has
23 passed.

24 Accordingly, plaintiffs' motion is **DENIED**. To the extent not relied upon, Microsemi's
25 requests for judicial notice are **DENIED AS MOOT**.

26 **5. MOTION FOR PARTIAL SUMMARY JUDGMENT OF PATENT INVENTORSHIP.**

27 Plaintiffs' motion is **DENIED**. Plaintiffs move to add themselves as named inventors to a
28 patent and to "reassign" that patent and "all published instances of it" to themselves. As "proof,"

1 plaintiffs argue that the “existence” of their settlement agreements (the very same agreements
2 they sought to “void” above) purportedly supports removing the named inventors and making
3 plaintiffs the sole inventors.

4 Defendant Microsemi argues that (1) plaintiffs’ inventorship claim is barred by laches
5 since the relevant patent issued in 2002; (2) there is no clear and convincing evidence that
6 plaintiffs contributed to conception of the claimed invention; (3) plaintiffs provided no proof that
7 “all published instances” of the patent should be “reassigned” to them; and (4) plaintiffs’ motion
8 was procedurally improper because it was filed before any defendant answered the complaint and
9 before the initial case management conference (Dkt. No. 156).

10 There is no evidence in the record, let alone clear and convincing evidence, supporting the
11 relief demanded by plaintiffs. Plaintiffs’ motion is **DENIED**. To the extent not relied upon,
12 Microsemi’s requests for judicial notice are **DENIED AS MOOT**.

13 **6. MOTION FOR PARTIAL SUMMARY JUDGMENT RE “PERFORMANCE RIGHTS.”**

14 Plaintiffs’ Motion is **DENIED**. To the extent comprehensible, plaintiffs seek “full
15 PERFORMANCE RIGHTS STANDING against the execution of any program derived from an
16 IETF Standard containing Plaintiffs’ PHASE-II IPs” (Br. 2). Plaintiffs argue that the Internet
17 Engineering Task Force (“IETF”) is a “rogue state,” who published standards used by technology
18 companies, including Apple, Google, Cisco, Microsoft, Oracle, Juniper Networks, and so forth.
19 Plaintiffs seek copyright protection over the IETF’s publications.

20 Defendant Internet Society is a non-profit corporation and the IETF is an “organized
21 activity” within it — not a legal entity — defendant clarifies. In any event, Internet Society
22 argues that no relief can be provided for plaintiffs’ bare motion, which was unsupported by
23 specific sworn facts. In pertinent part, Internet Society argues that (1) the second amended
24 complaint failed to allege ownership in any identifiable copyrighted work and (2) plaintiffs failed
25 to identify any specific publication or standard promulgated by defendant. The “narratives”
26 plaintiffs larded into the record in no way support the relief demanded, says defendant. Internet
27 Society also argues that plaintiffs should be ordered to show cause why they should not be
28

declared a vexatious litigant. (No motion to declare plaintiffs a vexatious litigant has been brought.)

None of the relief demanded by plaintiffs is warranted by this record. Plaintiffs have not shown any specific sworn evidence that they “own” the Internet Society’s publications. Plaintiffs’ motion is **DENIED**.

7. DISMISSAL OF THE SECOND AMENDED COMPLAINT.

Months have passed and plaintiffs have utterly failed to file a pleading that states a plausible claim. None of plaintiffs’ pleadings (Dkt. Nos. 1, 6, 112) satisfied *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs are now on their second amended complaint, after their prior pleading was stricken for a multitude of defects. At that time, plaintiffs were warned that failure to plead their best and most plausible case could result in dismissal with prejudice (Dkt. No. 109).

It is now hopeless to continue with this lawsuit. There are too many fundamental problems with plaintiffs’ pleading so only a few will be called out now. *First*, plaintiffs have failed to establish that the United States has waived its sovereign immunity, or that they have standing to sue the United States. *Second*, plaintiffs lack standing to assert patent infringement for even they concede that they do not own the asserted patents. *Third*, plaintiffs’ claims are time-barred. Most, if not all, of plaintiffs’ claims date back to the 1990s and early 2000s. The statute of limitations has long passed. *Fourth*, the second amended complaint failed to allege antitrust injury.


Having considered plaintiffs’ second amended complaint, plaintiffs’ oppositions to the motions to dismiss, and plaintiffs’ response to the order to show cause, this order finds that granting leave to amend would be futile. Plaintiffs have failed to cure the multitude of defects previously identified, despite having had an opportunity to review the then-pending six motions to dismiss and the prior order striking the complaint. Twenty defendants, including the United States, and seven law firms should not be dragged into incurring the expense of this hopeless and utterly frivolous lawsuit. Accordingly, defendants’ motions to dismiss and to strike the second amended complaint are **GRANTED**.

1 **CONCLUSION**

2 For the reasons stated herein, all of plaintiffs' motions are **DENIED**. To the extent not
3 relied upon, all of plaintiffs' requests for judicial notice are **DENIED**. The second amended
4 complaint is hereby **STRICKEN**. The entire action is **DISMISSED WITH PREJUDICE**. All hearings
5 herein (*i.e.*, January 8, 15, and 29) are hereby **VACATED**. Judgment shall be entered in a separate
6 order.

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8 **IT IS SO ORDERED.**

9 Dated: December 29, 2014.

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11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE
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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9
10 TODD S. GLASSEY and MICHAEL E. MCNEIL,

11 Plaintiffs,

No. C 14-03629 WHA

12 v.

13 MICROSEMI INC, US GOVERNMENT,
14 PRESIDENT OF THE UNITED STATES,
15 STATE OF CALIFORNIA, GOVERNOR BROWN,
16 THE IETF AND THE INTERNET SOCIETY,
17 APPLE INC., CISCO INC., EBAY INC.,
18 PAYPAL INC., GOOGLE INC.,
19 JUNIPER NETWORKS, MICROSOFT CORP.,
20 NETFLIX INC., ORACLE INC., MARK HASTINGS,
21 ERIK VAN DER KAAY, AND THALES GROUP,
22 and "UNSERVED" DOES,

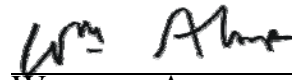
23 Defendants.
24
25 _____/

JUDGMENT

26 For the reasons stated in the accompanying order granting motions to dismiss and
27 striking second amended complaint, **FINAL JUDGMENT IS HEREBY ENTERED** in favor of
28 defendants and against plaintiffs. The Clerk **SHALL CLOSE THE FILE**.

IT IS SO ORDERED.

Dated: December 29, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

Todd S. Glassey, In Pro Se, and
Todd S. Glassey In Pro Se,
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321
tglassey@earthlink.net
AND
Michael E. McNeil, In Pro Se
PO Box 640
Felton CA 95018-0640
831-246-0998
memcneil@juno.com

UNITED STATES COURT OF APPEALS

San Francisco Division

Todd. S. Glassey, In Pro Se, and ,
Michael E. McNeil, In Pro Se,
Plaintiffs,
vs.
Microsemi et Al,
Defendants

Appeal No.: 14-17574

Motion to Correct Filing Error and
refer to DC Circuit

Notice of Motion and Motion to Transfer Newly Filed Appeal to DC Circuit

Plaintiffs improperly filed this appeal with the Ninth Circuit, it should
have gone to the DC Circuit because of the amount of the matter pertaining to
Tax Code and IRS related matters.

1 Because no substantive work has happened yet in the matter other than
2 docketing, this is the perfect time to move the appeal to the proper venue,
3 the Court of Appeals for the DC Circuit.

4
5 Therefore to correct that filing error, Plaintiffs do move with this notice
6 of motion and motion the Clerk of the Court be ordered to transfer this
7 appeal to the DC Circuit so it may be heard and properly referred to the
8 Court of Federal Claims therein.

9
10
11 Dated this 7th day of January, 2015

12 /s/ Todd S. Glassey

Todd S. Glassey In Pro Se,
305 McGaffigan Mill Rd.
Boulder Creek CA 95006
408-890-7321
tglassey@earthlink.net

15 /s/ Michael E. McNeil

16 AND
Michael E. McNeil, In Pro Se
PO Box 640
Felton CA 95018-0640
831-246-0998
memcneil@juno.com

May it please the Court,

Declaration in Explanation of the Filing Error in the matter herein.

1. I Todd S. Glassey Declare the following under the penalty of perjury of the Laws of the United States of America.

Notice of Appeal form has no check box or method of noticing the clerk which Court the appeal goes to

2. That I and Mr. McNeil reviewed the Pro Se Appellate Manual and filed the documents specifically as instructed.
3. The Ninth Circuit Appellate Pro Se instructions require the use of the Courts NOTICE OF APPEAL form.
4. That the NOTICE OF APPEAL FORM has no way or place to indicate to the Clerk of the US District Court where to refer the Appeal.
5. The Clerk as such assumes all appeals filed through them go to the NINTH CIRCUIT by default.

Our Matter has Tax Code and Revenue implications - should have been heard before the Court of Federal Claims

6. This matter for instance never should have been filed in the San Francisco District Court, it is a Tax Related Matter and should have been heard before the US Court of Federal Claims.
7. As such it was always our intent to file the Appeal with the DC Circuit to place the decisions pertaining to the larger issues of jurisdiction and venue in the hands of the people responsible for the rulings on tax code and enforcement issues.
8. As a Pro Se litigant McNeil and I realized this late into the process, and apologize to the court for adding more work to its already overburdened schedule.
9. We therefore ask the Clerk of the Ninth Circuit to refer this matter to the US Court of Appeals for the DC Circuit;

Jan 7th 2015, /s/ Todd S. Glassey, from Boulder Creek Ca, 95006

Supplemental Memorandum pertaining to Jurisdiction

1. 26 U.S.C. § 7482(a)(1). Congress originally placed venue for all appeals from decisions issued by the U.S. Board of Tax Appeals – later renamed the U.S. Tax Court – in the regional circuits, unless the individual did not file a return. 26 U.S.C. § 1141(b)(1) (1940) (providing that “decisions may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector’s office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia”)
2. Since in this matter no Tax Return was filed this matter by its very nature MUST be appealed to the DC Circuit. Further from James Bamberg, *A Different Point of Venue: The Plain Meaning of Section 7482(b)(1)*, 61 TAX LAW. 445 (2008), in which the author contends that [a] plain meaning reading of the [statute] instructs that the D.C. Circuit Court is the appropriate venue, the default even, for all tax cases on appeal from the Tax Court that are not expressly brought up in section 7482(b)(1). Thus, it would appear that cases dealing with . . . “collection due process” hearings . . . should all be appealed to the D.C. Circuit Court.
3. In 1966, Congress changed the venue provision, adding two subsections that prescribed the proper venue for appeals from Tax Court decisions concerning redetermination requests sought by individuals and by corporations. Pub. L. No. 89-713, § 3(c), 80 Stat. 1107, 1108-09 (1966) (codified at 26 U.S.C. § 7482(b)(1)(A)-(B) (1970)). For both corporations and individuals, the statute stated that the proper venue for appeals involving redeterminations of liability was the federal court of appeals for the circuit in which the taxpayer’s residence was located. *Id.* However, for the appeal of any case not enumerated in subsection (A) and (B), it assigned venue to the D.C. Circuit. *Id.* In other words, in 1966, Congress deliberately made the D.C. Circuit the default venue for tax cases.
4. Between 1966 and 1997, as Congress continued to expand the jurisdiction of the Tax Court, it also amended § 7482(b)(1) to add four more subsections, § 7482(b)(1)(C)-(F), that established venue based on a taxpayer’s residency. *See* Revenue Act of 1978, Pub. L. No. 95-600, § 336(c), 92 Stat. 2763, 2842; Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 1041(b), 88 Stat. 829, 950-51; Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 1042(d), 1306(b), 90 Stat. 1520, 1638-39, 1719; Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 402, 96 Stat. 324, 668; Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1239, 111 Stat. 788, 1028. After these various revisions, the D.C. Circuit remained the default venue if “for any reason no subparagraph [assigning venue to a regional circuit] applies.” 26 U.S.C. § 7482(b)(1). Unlike its approach when expanding Tax Court jurisdiction to other areas, Congress did not alter the venue provision when it created the CDP framework in 1998.

/s/ Todd S. Glassey, From Boulder Creek Ca, 95006, 7-jan-2015

PROOF OF SERVICE

This Motion to Refer this Matter to the DC Circuit is filed here in paper for the Clerk of the Ninth Circuit Appellate Court and electronically in the CASE FILE inside CAND based on my ECF account; As of today all parties in this matter are still active on the CAND ECF System and will be noticed through the ECF system of this filing.

Additionally a PDF copy of all documents filed is being Emailed to each of the attorney's representing defendants in the matter in addition to the ECF notice.

/s/ __Todd S. Glassey, _____
Todd S. Glassey, Plaintiff, Jan-7th 2015