

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

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**No. 14-17574**

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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*

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

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**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR  
"EN BANC RECONSIDERATION"**

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”) hereby oppose the motion filed by Plaintiffs-Appellants Todd S. Glassey and Michael E. McNeil (collectively “Plaintiffs”) seeking “en banc reconsideration” of five motions denied by the District Court. *See* Dkt. No. 24-1 (“Motion”).

To the extent comprehensible, Plaintiffs’ Motion appears to seek en banc consideration relating to requests that the Ninth Circuit: (1) grant the relief sought in the five motions, or (2) in the alternative “void[ ] the Dismissal [of the litigation] with Prejudice and return[ ] this matter to the District Court.” *Id.* ¶ 28. Neither of these requests is warranted, and the Motion should be denied. With respect to their request for en banc consideration, Plaintiffs have not come close to meeting the test set forth in Rule 35 of the Federal Rules of Appellate Procedure. To the extent Plaintiffs’ Motion requests appellate review of the lower court’s denials, such issues are not appropriate for motion practice. Moreover, these issues appear to overlap with issues raised in Plaintiffs’ Opening Brief (*see* Dkt. No. 23), and accordingly Defendants will address these issues in their Answering Briefs.

For the foregoing reasons, Plaintiffs’ Motion for “en banc reconsideration” should be denied.

Dated: May 18, 2015

Respectfully submitted,

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Pursuant to Circuit Rule 25-5(f), I attest that all other signatories on whose behalf the filing is submitted concur in the filing's content.

By: /s/ David R. Eberhart  
David R. Eberhart

9th Circuit Case Number(s) 14-17574

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