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**THE US COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Case No.: 14-17574

Todd S. Glassey In Pro Se, and

Michael E. McNeil In Pro Se,

Appellants,

vs.

Microsemi Inc, et Al,;

Appellees

**NOTICE OF MOTION AND MOTION TO FIND
FLAW IN NORTHERN DISTRICT CLERKS
OFFICE AND APPELLATE CLERKS OFFICE
PROCESSING OF AMENDED NOTICE OF
APPEAL WHEN IT CHANGES THE TARGET
JURISDICTION OR CIRCUIT THE APPEAL IS
SET FOR**

NOTICE OF MOTION AND MOTION

**TO FIND FLAW IN NORTHERN DISTRICT CLERKS OFFICE AND APPELLATE CLERKS OFFICE
PROCESSING OF AMENDED NOTICE OF APPEAL WHEN IT CHANGES THE TARGET
JURISDICTION OR CIRCUIT THE APPEAL IS SET FOR**

1. May it please the Court, Appellant/Plaintiffs Glassey and McNeil do submit this Notice of Motion and Motion to immediately find mechanical processing flaws in the filing of Ninth Circuit Appeal 14-17574;

- 1 1. This flaw is based on the failing of the processes defined in the Clerks Office at this time
2 pertaining to a timely and properly filed Amended Notice of Appeal which formally change
3 the target jurisdiction under the law.

4 5 **HISTORY**

- 6 2. We understand this has not happened yet, I.e. a filing error that changed the target circuit of
7 the appeal, but there is a first time for everything.
- 8
- 9 3. To date because there is no policy at this time in the Clerks Office on what to do when an
10 Amended Notice of Appeal changes the Target Jurisdiction of the Appeal both Clerks
11 Offices have failed to properly terminate the Ninth Circuit Appeal as required under the
12 Amended Notice of Appeal filed properly with the CAND Clerks office.
- 13 4. Instead, the lack of policy in the Clerks Office on this matter has forced Plaintiff/Appellants
14 to run two simultaneous efforts to litigate the same issues across two Circuits, and have
15 created a hardship for Plaintiff/Appellants in the process.
- 16

17 18 ***Plaintiffs relied on forms from CAND Website***

- 19 5. Plaintiffs relied on CAND Clerks pre-built form packages, which do not provide any method
20 of appeal to the DC Circuit (or did not at that time).
- 21 6. Plaintiffs then moved the Ninth Circuit Appellate to correct the filing error but it refused and
22 allowed for the refiling of the matter.
- 23 7. This refusal forced Plaintiffs to then file more content with the Ninth Circuit, which should
24 have been properly shut down by the Amended Notice of Appeal as filed 1/7/2015 in the
25 CAND ECF system.

1
2 ***Plaintiff/Appellants properly filed an Amended Notice of Appeal***
3 ***immediately***
4

- 5 8. In that time, Plaintiffs found that the proper method of addressing the misfiling was to amend
6 in the appropriate period the original notice of appeal to now properly identify the DC
7 Circuit as the target jurisdiction of that appeal and that was properly done with the Clerk of
8 the Northern District. However, the Clerks refused to terminate the matter that the original
9 Notice of Appeal created because there is no policy for what happens when an Amended
10 Notice of Appeal changes the target of the Appeal from the Ninth Circuit to the DC Circuit
11 yet.
- 12 2. Since Plaintiff/Appellants are suing under both a unique dual-Patent and Copyright Claim to
13 computer programs containing those patent protected PHASE-II IP's and Antitrust relating
14 to them; and
- 15 3. The unlawful filing of six patents in other nations not contemplated or released under any
16 agreement existing today, this matter appropriately is appealable to the DC Circuit.
- 17 9. As such, Plaintiff/Appellants should not be penalized by their reliance on the Clerks pre-built
18 CivilPacket forms, which originally caused this problem. Plaintiff/Appellants have has
19 corrected the improper filing with an Amended Notice of Appeal to the DC Circuit.

20 ***Because of this failing Plaintiff/Appellants had to file a second appeal***
21 ***to address that failing in the Ninth Circuit processes***

- 22 10. In the mean time Plaintiffs to ensure this properly took hold also sent additional initiation
23 paperwork to the DC Circuit with the appropriate fee for the filing of the matter meaning
24 Appellant/Plaintiffs have paid functionally twice already for the same appeal as well.
25

Conclusion

4. The unfortunate accident was something which had not happened before but which is clearly contemplated by the Will of Congress in their leaving the Option in FRAP 3.x as to this use of the Amendment Right itself. Since there is, no specific language in FRAP 3 about limiting an Appeal to the specific filing it was originally applied for they clearly contemplated the need to in an extreme situation like this one be able to properly correct filing errors to get the matter to the correct court.

11. We therefore ask the Ninth Circuit Appellate create formal policy to address this matter and to order to Remove and Consolidate Ninth Circuit Appeal #14-17574 with this the properly filed Appeal to the DC Circuit matter #15-1326 ; and

12. In so doing also order a full transcript from the current Docket on file with the underlying litigations (14-CV-03629-WHA and 13-CV-04662-NC) from the San Francisco District Court be transferred to the Clerk of the Appellate Court, DC Circuit with the Case transfer to ensure proper handoff at this point.

Dated this 7th day of March, 2015

/s/ Todd S. Glassey

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UNITED STATES DISTRICT COURT
Northern District of California

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

Amended Notice of Appeal

Judge: W.H. Alsup
Where:
When: Feb 7th 2015

1. May it please the Court, based on their Pro Se lack of knowledge of the System, Plaintiff's do herein formally file this Amended Notice of Appeal, to the DC Circuit with the following Commentary.
2. The CAND PRO SE LITIGANT packages called CIVIL PACKAGES (see Attachments) ONLY allow appeals to the Ninth Circuit and that is inappropriate. An Appeal from any USDC may be made for Cause to

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any other Appellate Division of the US Court System and the Ninth Circuit being the only choice offered to USDC Appellants out of the CAND Courts is inappropriate.

3. This matter is timely filed because no real work on the Appeal has progressed. The attached Notice of Appeal to the DC Circuit is then appropriate and timely in this matter.

Dated this 7th day of February, 2015

/s/ Todd S. Glassey

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9th Circuit Case Number(s) 14-17574

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 3/7/2015 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) /s/ Todd S. Glassey

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 3/7/2015 .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

State of California, Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

Signature (use "s/" format) /s/ Todd S. Glassey