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6 UNITED STATES DISTRICT COURT

7 San Francisco Division

8 Todd S. Glassey In Pro Se and Michael E.

9 McNeil In Pro Se,

10 Plaintiff,

11 vs.

12 Microsemi, et Al,

13 Defendant

Case No.: 14-CV-3629-WHA

Date: November 19th 2014

Time: 8 AM

Courtroom 8

Judge W.H. Alsup

14 Plaintiffs Opposition to Defendants IETF
15 Motion to Dismiss

16 **PLAINTIFFS OPPOSITION TO DEFENDANTS IETF**

17 **MOTION TO DISMISS**

18 May it please the Court, the Plaintiffs in the above entitled cause of action respectfully submit
19 this unified opposition to IETF/ISOC Motion To Dismiss, and ask the Court to deny both
20 motions to dismiss by ruling in Plaintiffs favor on the questions of both sufficiency in the
21 Infringement Claim per FRCP 8(A) and 12 and proper filing of the Antitrust per Sherman [and in
22 Microsemi's case the Clayton] Acts and Fraud Claims for FRCP 9(B) pertaining to "the
23 manipulation of global standards by defendants to contain patent protected IP in any form
24 without licenses", in this case belonging to Plaintiffs.

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16 Ashcroft v Iqbal 556 US 662, 678 (2009)..... 9

17 Atari Games Corp. v. Nintendo of America, Inc., 897 F.2d 1572, 1576(Fed. Cir.

18 1990) 13

19 *Cybersound Records v UAV corp* 517 F.3d 1137, 1151 (Ninth Circuit 2008)..... 12

20 *id.*..... 9

21 Jefferson Parrish Hospital Dist No 2 v Hyde, 466 US 2, 29 (1984)..... 9

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25 *MGM Studios v Grokster* (545 U.S. 913)..... 12

1 *MGM Studios v Grokster* 545 U.S. 913..... 8

2 *Twombly* at 555-556..... 8

3 US BK 01-54207-MM..... 15

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5 **Plaintiff's Response**

6 Plaintiffs respond that we believe the complaint although produced in early "Pro-Se style" fully

7 meets the strenuous requirements for an antitrust filing (event, market segment etc), dully meets

8 the local Ninth Circuit and FRCP Rule 8 standards for FRCP Form 18 filings in patent

9 infringement matters., and further it fully meets the FRCP Rule 9B fraud requirements.

10

11 Finally that the Standards of Tortuous Interference is fully documented in the Plaintiff's

12 allegation of acts by defendant IETF which tamper or manipulate Plaintiff's Market Power

13 through the issuance of unlicensed global network standards inside the Global Standards Market

14 Segment and Programs the IETF operates.

15

16 Each of the top-claims put forth by the Defendant is answered in the Memorandum of Points and

17 Authorities. Again we apologize for our Pro Se style, if our rights were recovered we would be

18 represented by counsel. Plaintiff's respond then:

19

20

21

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **Preliminary Statement**

24 In this response the Plaintiff would like to apologize to the Court and

25 especially the Judges Clerks' who are forced to review this response for its

pro-se flaws, specifically its meandering style as opposing counsel puts it.

1 We have tried to give the Court the proper background on the IETF and this
2 situation herein to respond to each of their claims for their Motion for
3 Dismissal.

4 ***A Standard based on a patent creates Market Power***

5 The Global Networking Standard which is based on patents creates MARKET POWER
6 for whoever controls the IP inside it. The more important the Standard is,
7 the more MARKET POWER it creates. Ours (US6370629) we assert has created a
8 control on many transaction systems using encrypted timestamps across a
9 networking transport in pretty much any form, which because of this fraud by
10 the IETF today impacts significant amounts of online commerce today.

11 The allegation is the IETF recognized the Market Power of the US6370629
12 Patent and allowed it to be placed in numerous standards today because of
13 their knowledge it would be impossible to stop the total infringements. As
14 such the IETF "manifest this loss" whether intentionally or not for
15 Plaintiffs, and Plaintiffs will prove this at trial herein.

17 ***This IETF use of the US6370629 IP created a Market Power Status for the 18 Plaintiff's Property***

19 Because of what the US6370629 patent controls, and the number of places the
20 IETF has integrated it into the worlds networks, that means this one patent
21 carries MARKET POWER for any and all purposes including this Antitrust
22 complaint, and that the Market Power manifests in the form of "a Legitimate
23 Technological Monopoly based on Technical Excellence" under the antitrust
24 standards. One we claim the *actions of the fraud actions alleged against
25 Defendant IETF and those implementing products from its standards are
responsible for creating.*

Statement of Facts

The First Amended Complaint ("FAC") is fully compliant with all filing requirements under FRCP §8xx, §9(B) for Enhanced Fraud Specification mandates, and §12(B)xx for all counts pertaining to the IETF and its Antitrust Activities with its members Cisco, Juniper Networks, Google, Apple, Microsoft, Ebay, Paypal, US Government and Netflix.

IETF is its own Market Sector (the Standards Sector for Internet Standards) and as such this is functional for naming the Market Sector as the Standards practice for the Antitrust Definitions.

The IETF regularly violates its own IP protection rules and practice requirements and refuses to enforce either BCP78 or punitive measures for BCP79 violations against any party other than Plaintiffs. This has manifest itself in any number of IETF protocols being published with the specific third party rights to copy and create derivative works, only when these IP's contain patent protected Intellectual Properties the entire development practice of the IETF then infringes per IETF Rule BCP79 #5.5 which assures that No Patent Rights are affected in any IETF publication or Copyright Assignment" (See Exhibits and Declaration).

Argument

The FAC should not be dismissed and is fully functional as filed. It states several claims against the IETF and its parent organization, properly notices the fraud complaint and fully documents the antitrust issues in the

1 operations of the IETF the sole Global Standards Organization responsible for
2 all network standards today for general networking.

3 It further enumerates the fraud complaint in detail by charging the IETF with
4 the use of the infringing code it forced all parties to place in the drivers
5 and network software built to the IETF's published standards in disruption of
6 Market Segment access, control of the horizontal markets by giving
7 Plaintiff's IP away, and in frauds as charged.

8
9 ***The FAC is FRCP 8a, FRCP 9B(6) and FRCP 12(B) compliant***

10 We will show in the next statements that the FAC fully meets FRCP 8A, Local
11 Form-18 Use Rules, the FRCP 9B fraud hurdles and is fully FRCP 12(B)
12 compliant.

13
14 ***The FAC states all claims with enough specificity to stand against all
defendants***

15 Under FCRP **Rule 8(A)** the Complaint has enough specificity to allege and
16 charge "Patent Infringement inside a global standards practice" The complaint
17 properly notices the IETF itself as a direct infringer and the ISOC as well
18 in their use of software's containing patent protected Intellectual
19 Properties.

20 As such under ***Bell Atl Corp v Twombly 550 US 544,555*** the complaint properly
21 notices specific claims against all parties here. The complaint further asks
22 for factual relief as well under the same Twombly precedent as well as
23 meeting the requirements for providing a grounds for the case and especially
24 discovery to proceed.

1 **TIMELY FILING: Statute Of Limitations is not an issue in this matter, new**
2 **infringements happen every time a device is sold with IETF code in it.**

3 Patent Frauds which have ongoing Infringements are prosecutable for each new
4 infringement, and in a collective sense when a fraud is the basis of these
5 infringements that is accepted to toll out the statute of limitations¹.

6 **TIMELY FILING: Sherman Claims Clock started with recovery of Settlement**
7 **Agreement**

8 Since the Enforcement Contract (Aka the DDI Settlement Agreement filed with
9 PACER 6) was withheld from Plaintiffs for 12 years and not recovered until
10 February 26th 2013, that started the clock for the Sherman Act claims, and so
11 they and the ongoing infringement and loss claims are all timely as such.

12 **FACTUAL MATTERS: Fully meets Ashcroft v Iqbal requirements**

13 The claim and the complaint fully meets the relief requirements of Ashcroft v
14 Iqbal 556 US at 678 in stating factual matters, that the IETF operated its
15 computers on programs containing infringing code it was the specifier of and
16 so bears responsibility for that under the Supreme Court ruling in *MGM*
17 *Studios v Grokster* 545 U.S. 913. see also right to relief per *Twombly* at 555-
18 556

19 **DECEPTIVE PRACTICES: IETF's conduct is Deceptive - all Claims against**
20 **ISOC and ISOC members are listed**

21 Finally under the Ashcroft matter, the Ninth Circuit and the Federal Rules of
22 Civil Procedure set Form-18 as the level of specificity necessary to file a
23 Patent Infringement Matter in the Ninth Circuit meaning anything which is
24

25 ¹ Knoell v Petrovich 76 Cal Ap 4th 164, 168 (Cal. Ct. App. 1999) are fully met..

1 based on Form-18 as our filing is will satisfy the Specificity and Right to
2 Recovery constraints of Ashcroft v Iqbal 556 US 662, 678 (2009) herein.

3 The ISOC and IETF are both named as the parties responsible for creating the
4 standards documents which force others to infringe to adopt the standard in
5 the documents, and then the IETF and ISOC use of those fruits - the drivers
6 and network software's made to meet those standards fully changes them with
7 conversion and the IP theft this matter is ultimately about.

8 9 ***The IETF Tortuous Interference Claims***

10 The FAC meets the requirements for Tortuous Interference claims against IETF,
11 IETF Members, and Microsemi as individuals and a conspiracy under the
12 definitions of the USCA Conspiracy Statute (18 USC §371) as part of its very
13 structure as a digital community producing technical standards as their work
14 product.

15 The claim is they operated together and separately to diminish or destroy the
16 market power created by the US6370629 patent and its foreign filings.

17
18 In Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984)
19 (expressing the view in dictum that if a product is protected by a patent, we
20 see "it is fair to presume that the inability to buy the product elsewhere
21 gives the seller market power") with id.at 37 n.7 (O'Connor, J., concurring)
22 ("[A] patent holder has no market power in any relevant sense if there are
23 close substitutes for the patented product."). Thus the actions of the IETF to
24 place our IP into standards they allowed others to re-implement under their
25 derivative license as software programs is a direct attack on US Patents and
the Controls US6370629 created.

1 **The Infringement Claims are properly plead in the Complaint**

2 The Infringement Claims are particular and specific to the IETF and the
3 parties producing code from its designing the Plaintiff's IP into their
4 Standard-compliant Products. This is a direct attack by the IETF and the
5 parties using the IETF Standard on the Market Power a patent can have
6 creating an antitrust matter from their infringement as well.

7 **The Infringement Claims are FRCP FORM18 Compliant**

8 The infringement claim is both properly formed as it is based on FRCP
9 Form-18 and notices specific documents which the IETF published. The Form-18
10 filing is expanded by noticing the IETF of the actual documents we filed
11 notice of the inclusion of our protected IP inside of to them formally
12 through the Intellectual Property Rights webpage on their site. The listing
13 of twenty examples was included with the filing to directly link the claim to
14 the specific document for clarity and full compliance with the patent
15 infringement practices for filing in the Ninth Circuit.

16 **IETF is both a Physical Infringer and one who forces others to Infringe**

17 As to the IETF being an infringer itself, it uses code with infringing
18 technology inside it to operate its computers and networking infrastructure
19 and as such is a physical infringer. The IETF in this infringement also
20 documents its fraud actions because in order for it to be an infringer it had
21 to "force technology providers to code infringing technology into their
22 standards-compliant products which the IETF uses to operate its commercial
23 and standards practices.

1 Since most of those documents published as standards (as RFC's²) by the IETF
2 have been since reduced to code and that code is the current instance of the
3 IETF standards in place, the IETF itself upgraded their systems to the
4 infringing code they are the designers of, and operate their services and
5 infrastructure atop it.

6 As such they are both the creators of the global mandate for infringement
7 (the network standards containing the unauthorized IP) and an infringer
8 themselves by their use of that IP in the operations of everything they do.

9 **ISOC/IETF's "Disruption of Trade Relationship" standing**

10 The IETF theft and publication of IP it didnt have rights to in a standard
11 would cause millions or more infringing copies of the Intellectual Property
12 in question to be fraudulently resold to third parties under the IETF
13 copyright. This is a recognized concept in DC Circuits overturning of RAMBUS
14 and the FTC conviction there.

15 Since its partner Microsemi didnt stop these postings, and since the IETF was
16 informed of litigation in the courts they continued to publish the disputed
17 IP with their re-licensing Copyright atop it.

19 **Formal Cease and Desist was sent to IETF**

20 Plaintiffs formally served the IETF with notice to stop using their code and
21 IP protected by their licensing rights. As such and since the IETF was
22 formally noticed to cease and desist each protocol use of our IP, their
23 continued publication of that material and their relicensing its use under
24 the copyright is the conversion as well on a global level of the IP.

25 ² Request For Comments - the IETF RFC is the technology specification document
in its publication form.

1 **Cybersound Precedent Compliant**

2 As such this complaint fully meets the requirements set forth in *Cybersound*
3 *Records v UAV corp* 517 F.3d 1137, 1151 (Ninth Circuit 2008) in regard to the
4 economic relationship, the Defendants knowledge of it through the IPR
5 filings, and their continued use of the Intellectual Properties as
6 demonstrated in hundreds of documents they have published which contain this
7 same set of IP's.

8 The first twenty of the infringing documents were formally named in the
9 filing of the complaint.

10 **MGM Studios v Grokster has a direct implication to Standards which**
11 **contain unlicensed IP**

12 The fact the IETF operate their systems atop this infringing code to
13 maintain and develop those network standards creates a claim that all of the
14 subsequent instances of the protocols are themselves tainted as fruit of a
15 bitter tree.

16 That the IETF itself has no licenses to use the code implies through *MGM*
17 *Studios v Grokster* (545 U.S. 913) here that all of the product they produce
18 is tainted at best and anyone knowingly ignoring the uses and purpose of
19 their need to license this code would if they were actively a member of the
20 IETF a party to the conspiracy theory here as well.

21
22 **K-Tech**

- 23 1. The claims in the Patent Infringement Charge are also fully supported
24 by the DC Circuit reversal of the District Court in *K-Tech*
25 *Telecommunications, Inc. v. Time Warner Cable, Inc., Nos. 12-1425, -*
1446 (Fed. Cir. Apr. 18, 2013) , Further, the DC Circuit Court ruled

1 *"That K-Tech cannot point to the specific device or product within TWC*
2 *s or DirectTV s systems that translates the digital television signals*
3 *each receives especially when the operation of those systems is not*
4 *ascertainable without discovery should not bar K-Tech s filing of a*
5 *complaint."* Plaintiffs claim the same for defendants IETF licensed and
6 *other location based products we allege infringement in.*

7 **Antitrust Claims**

8 Antitrust³ protection and transparency in standards agencies is critical and
9 the IETF is anything but transparent. Our complaint alleges actions which
10 fully qualify claims for Procompetitive Manipulation, Grantback Licensing
11 with no standing to license, and Standards Manipulation under the National
12 Cooperative Research Act⁴. All of which immediately qualify this case for
13 antitrust at the global standards level status.

14
15
16 ³ See Atari Games Corp. v. Nintendo of America, Inc., 897 F.2d 1572, 1576 (Fed.
17 Cir. 1990) ("[T]he aims and objectives of patent and antitrust laws may seem,
18 at first glance, wholly at odds. However, the two bodies of law are actually
19 complementary, as both are aimed at encouraging innovation, industry and
20 competition. When market power does result, "Antitrust law recognizes that a
21 patent's creation of monopoly power can be necessary to achieve a greater
22 gain for consumers." Id. at 9.

23
24 ⁴ National Cooperative Research Act. See H.R. Conf. Rpt. No. 1044, 98th Cong.,
25 2d Sess., 10, reprinted in 1984 U.S.C.C.A.N. 3105, 3134-35

1 The effect on the various markets served specifically by the Tech Market the
2 Standards Market serves are the key markets where Market Power is being lost
3 based on IETF and Microsemi actions.

4 **Antitrust: Sherman Act Section One is named in Complaint**

5 The complaint names Section One of the Sherman Act in relation to the
6 Antitrust matter specifically but there are in fact others including a
7 Clayton Act complaint (which is one of the counts against Microsemi itself
8 over the merger).

9 In all instances the Sherman Act section one violation is accurate and upon
10 further discovery we believe there will be spoliation and possibly Section
11 Three act violations in addition to the Section One Act which is properly
12 charged here.

13 **Antitrust: Antitrust Injury is properly stated**

14 Per LiveUniverse Inc v MySpace304 F.App'x 554,557 we are fully complaint in
15 that we allege section One violations by IETF in their "setting aside our
16 patent protections by publishing patent-protected processes as key elements
17 of 20 named protocols which are today critical to operating the Internet" and
18 as such all parties producing local area networking hardware infringe by the
19 production of those devices and anyone using them infringes as a third party
20 beneficiary of their fraud. The harm to the public welfare is essentially the
21 setting aside of an international patent protection in favor of a single US
22 Copyright, that of the IETF. This both satisfies the specific injury i.e.
23 the inability to enforce our patent because of the sheer number of infringers
24 and their forced conversion of our Technology Patent to a Standards Essential
25 Patent and the negligence based damage that caused is extremely large today.

Antitrust: Antitrust Market Sector is properly stated

1 The Antitrust provisions pertaining to the market sector are the IETF
2 Standards Market, a place where Professional Standards Engineers and
3 Standards Board Operators work to create the worlds standards . It is from
4 these that all technology markets receive their products (in re Jefferson
5 Parrish Hospital Dist No 2 v Hyde, 466 US 2, 29 (1984)). This is inherent in
6 the charging and enumeration of the use of the infringing technologies in the
7 operations of their systems.

Other Claims

Misappropriation of Trade Secrets

11 Parties within IETF had access to key information from CertifiedTime Inc
12 which was protected under Tradeseecret Protections and which appeared inside
13 of several timestamp related standards in the IETF. Discovery will show the
14 actual path that information took and allow plaintiffs to show that
15 information came from property sold to Plaintiff Glassey by the US Bankruptcy
16 Court in 2003 from US BK 01-54207-MM CertifiedTime Inc). Microsemi was
17 originally in possession of this information as part of its review of the
18 company Plaintiff Glassey ultimately bought from the Bankruptcy Court called
19 CertrifiedTime.

Conversion

21 The conversion claim pertains to Microsemi's breach of contract and their
22 withholding the contract which with their partners constitutes functional
23 conversion of the property. The IETF took the IP and "by intentionally
24 placing it in their standards forced the conversion of that property by any
25 and all parties implementing their standards". When the IETF consummated its
own use of the infringing systems that was the final peg to hang a hat on so

1 to speak proving its operation of the conspiracy as a form of the standards
2 practice directly, the theft of the IP and the conversion by their own
3 acceptance of the code into their systems without license or compensation to
4 Plaintiffs in any form. This also directly shows the IETF Tortuous
5 Interference with Plaintiff's Economic Advantage and the IETF action in
6 damage the Market Power the Plaintiffs IP rights controlled.

7 **Conclusion**

8 The Defendants motion to dismiss should be denied. As should all of the
9 motions to dismiss as all parties here are either direct parties to the
10 Operations of the IETF or design and resell protocol technologies based on
11 IETF licenses and as such are tied to the requirements of BCP79 therein. This
12 includes all parties as named in the titling of this suit.

13
14 If the court rules otherwise we would ask that the specific counts being
15 dismissed or found inferior be allowed to be amended to properly meet the
16 charging requirements of the Ninth Circuit and your honors Court.

17
18
19 Respectfully submitted,

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