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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Microsemi Inc, US Government, et Al;,

Appellee,

vs.

Todd S. Glassey, In Pro Se, and , Michael E. McNeil, In Pro Se,

Appellants

Case No.: No. 14-17574

AMENDED MOTION FOR REASSIGNMENT (to Correct Jurisdiction Confusion) TO FEDERAL CIRCUIT

AMENDED MOTION FOR REASSIGNMENT (to Correct Jurisdiction Confusion) TO FEDERAL CIRCUIT

1. May it please the Ninth Circuit Appellate Court, the Appellant/Plaintiffs have experienced a misconception of the relationship between the DC Circuit and the Federal Circuit as being the same courts, and as such have improperly filed with all intention of using specifically the Federal Circuit with its Patent Specialty area of Superiority amongst the Circuit Courts and we do amend that Motion to Consolidate with DC Circuit 15-1326 to specify instead a Transfer of 14-17574, this matter to the Federal Circuit to get the process of adjudication in the appropriate court on track.

Calendar, Staying or Alternatively, the One Month Extension

2. We ask that all other considerations and calendar dates be stayed and reassigned pending this motion; or in the failing of that to allow for the one month automatic extension to filing the Brief as well, giving Appellant/Plaintiffs time to seek Mandamus if this Motion to Amend to transfer to the Federal Circuit is not granted. That new due date for the Brief being May 8th 2015.

This Matter is on-target for Federal Circuit Appellate Review

3. Plaintiff/Appellants properly filed this unique case pertaining to Patents, their fraudulent filing, irregularities within the USPTO itself, the foreign filing of patents without releases, and then the subsequent abandonment of seven foreign instances of US6360629 make this matter ripe for review as well.

FRAP 4(d)

4. Notice of a mistake of this type to the clerk should have raised a response. Appellant/Plaintiffs have been attempting to correct this since the initial filing of the Notice of Appeal, and so this request for Amendment also is timely. If granted it should stay any further proceedings in the Ninth Circuit while the Federal Circuit opens the matter and properly assigns a schedule.

Appellants notice the Court on Expiry of the US6370629 Patent

5. The Court should take formal notice that there are likely only two or more effective years on the US6370629 IP rights for PHASE-II IP and that for the last 13 or so years Microsemi has represented to parties that
    a. "Appellant/Plaintiffs have no settlement, that the document presented to third parties for investment simply didn't exist"; and that
    b. "Appellant/Plaintiffs held no rights to any IP which was Protected by US6370629"
6. But since PHASE-II IP is protected by US6370629 and the Appellant/Plaintiffs are the SOLE OWNERS of PHASE-II IP and licensed to enforce its licensing against all other areas of use except those of ConfidentialCourier, then neither of those statements are true.

The Court Review of the Structure and Order of Release Statements in the Settlement is crucial

7. Finally, a fully executed copy of the DDI *(US6370629) Settlement Document was obtained from an outgoing Microsemi Attorney; This was the first fully executed copy of the DDI settlement Appellant/Plaintiffs ever had. It was obtained 2-26-2016 after having been signed in 1999 and denied as to its existence until that time.

> 339. Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code; or an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of

> action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.
> 2. An action against a sheriff or coroner upon a liability incurred by the doing of an act in an official capacity and in virtue of office, or by the omission of an official duty including the nonpayment of money collected in the enforcement of a judgment.
> 3. An action based upon the rescission of a contract not in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

8. Today that means, under CCP339(1) that Appellant/Plaintiffs do have a Settlement they can enforce claims against or challenge in Federal or State Court;

9. The actual turn over from Burton to Appellant/Plaintiffs counsel in 2013 constituted the Discover Event as noticed under California Contract law which the Settlement is tied to.

The review of the Settlement itself is what was requested

10. It is that very settlement which is the Document the Appellant/Plaintiffs sought the review of so that they may understand what the requirements for the releases against each individual patent were and what their rights are to Phase-II IP's in those nations where US6370629 was filed and then abandoned. They further sought an understanding from the Court of whether they were by that same settlement assigned all rights against all uses of PHASE-II IP outside of the ConfidentialCourier(tm) Patent;

The total scope of the DDI Settlement is US6370629 and its division of IP enforcement rights as well as the management responsibilities for the patent itself

11. If that is true the only way the Settlement can assign those right is from the authority created by the Issuance of the US6370629; No other Intellectual Property Rights are codified or defined in any part of that document except those captured as what was finally issued as US6370629. So it is through its authority *(as denoted by the order of the two assignment statements and their content).

It took 13 years to get the executed copy of the settlement but that made the District Court matter timely

12. Plaintiffs do have a settlement, the issue is whether it is complete enough to enforce and whether the withholding of it for 13 years doesn't invalidate it in its form.
13. As such, this matter functionally pertains to a Patent Sublicensing agreement (per Talbot v Quaker State Motor Oil Refinery) and whether the International Filings per Gellman were separate Agreement Instances as Appellants have asserted;
14. Because of these key things all pertaining directly and indirectly to US 6370629 and to the fraudulent filing of US6393126 and its foreign instances, this matter is ripe and properly seated in the Federal Circuit. and as such is directly a Patent Matter pertaining to the Supreme Court standards for Talbot and Gellman and their Application to the Content and Controls of the Settlement Agreement for US6370629 itself.

Unfiled Tax Return Implications - Under IRC165

15. As such Appellants are entitled to a review of the unfiled Tax Implications of that as well, something germane to the Federal Circuit;

16. The total loss of the enforcement rights and write-down of all enforcement losses against Phase-II in the US will happen this calendar tax year as well, something for the Court itself to ponder since we are talking about total losses in Australia, Japan, South Korea, Brazil, Canada and the EU as well as most of the existing Phase-II IP which Appellants have been defrauded of use of.

Within the Context of the Circuit Charters, the Appellants choose the Venue (either Ninth or Federal Circuit) in matters pertaining to Patent Litigations as this one is.

17. In a US District Court Appeal from a Ninth Circuit District Court there are two options for appeals pertaining to Patent or Patent Related Matters those being the US Court of Appeals for the Federal Circuit

(CAFC) or the Ninth Circuit itself. From the CAFC website (http://www.cafc.uscourts.gov/the-court/court-jurisdiction.html):

> ***The Federal Circuit is unique among the thirteen Circuit Courts of Appeals. It has nationwide jurisdiction in a variety of subject areas, including international trade, government contracts, patents, certain money claims against the United States government, federal personnel, veterans' benefits, and public safety officers' benefits claims. Appeals to the court come from all federal district courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims.***

18. This Appeal pertains to US and International Trade matters of unlawfully filed Patents in seven nations as well as abandoning those filings to cause intellectual-property damages to Appellant/Plaintiffs.

Settlement Void? - in re "Patents obtained through fraudulent means and fraudulently promulgated through US Federal Filings"

19. In regard to US based patent filings, this matter pertains to Patent Content with US63903126 and its Inventorship. It also pertains to alleged frauds in the unlawful transfer of US6370629 to Microsemi (Datum) to enable the use of the Patent as a lever in an extorted settlement. The grounds and effect of the settlement as well as its being finally recovered have never been reviewed. The functional content of the settlement has never been reviewed.
20. Since Appellant's rights to Phase-II IP are eternal through both their copyright and limited through the patents lifetime (assuming they have enforcement rights) this matter is properly appealed to the Federal Circuit.

> The Federal Circuit supported its determination with citations to case law stating that concrete forms of coercive relief are not required for constitutional determination of an actual controversy. The parties' failure to inform the Court of the imminent expiration of the patent was also noted. Although the case was not found moot, the Federal Circuit explained that, even if it was moot, vacatur is not required, as vacatur is a discretionary matter.
> Circuit Judge Prost wrote a separate concurring opinion, explaining that she does believe that the appeal is moot, but would still deny the motion as a matter of discretion (*Microsoft, Corp. v. ITC* (2012-1445)

21.

22. (Microsemi represented to all it didn't exist until it was turned over in late Feb-2013 for the first time - no fully signed copy was returned with the other settlement agreement's signing in 1999 and as noted, its

existence and effect were denied by Microsemi to all for years. The effect of that action has never been allowed to be reviewed in a court of law.

23. It also applies to alleged frauds around US6370629 and its Settlement and Shared-Use Release as well as the Sherman and Clayton act frauds used to allegedly extort the 'DDI Patent Settlement' from Appellant/Plaintiffs.
24. This matter also pertains to existing Federal Circuit matters and is further supported by the ruling from U.S. Court of Appeals for the Federal Circuit in its nonprecedential order in *Microsoft, Corp. v. ITC* (2012-1445.

Foreign Patent Fraud Claims

25. In regard to Foreign Patent filings, it likewise pertains to frauds in unlawful filings of both US63903126 in other nations which list parties not involved with the genesis of the Trusted Timing Infrastructure as its inventors, and likewise instances of US6370629 filed in seven foreign jurisdictions which were subsequently abandoned to prevent enforcement even if this litigation is successful;

26. As such Plaintiff/Appellants chose to send their matter per the Charter of the Federal Circuit Appellate Court there for adjudication.

27. This question of Federal Circuit isn't something Appellee's are generally allowed to interfere with;

Historically - in re the Appeal

28. Plaintiff/Appellants improperly filed with the only form available to them from the Court's website which specified Ninth Circuit only.
29. That notice of Appeal created this matter 14-17574 before the honored court today.

30. Plaintiff/Appellants properly filed an Amended Notice of Appeal correcting the Target Jurisdiction of this Patent specific litigation; Rather than consolidating the two matter, that created the separate Court of

Appeals in the DC Circuit accidentally instead of the intended Federal Circuit. That matter also has a motion to transfer it which will be filed with the court today;

The Amended Notice of Appeal should have caused the Clerks office to formally notice the Appellate Court in San Francisco of the Filing Error and terminate the proceedings

31. Under the simple method of filing the amended notice of appeal citing the Federal Circuit, this matter should have been terminated in the Ninth Circuit; but because of the flaw in the clerks procedures this matter exists now before both Appellate Courts;

32. This original motion was for consolidation of this matter (Ninth Circuit 14-17574) with the DC Circuit 15-1326, which also was mistakenly filed, both should be Federal Circuit Court of Appeal matters under the Courts Patent Superiority standing in the Circuits.

Plaintiff/Appellants have paid for two appeals against the same causes now in two separate circuits.

33. Plaintiff/Appellants have had to spend two filing fee sets herein; And as such requested the Ninth Circuit Clerk per the Amended Notice to terminate and transfer all of this matter including the transcript to the Clerk of the DC Circuit's Appellate Division for processing as the basis of 14-17574 and in so doing refund the duplicated filing fees;

All parties are represented in both matters before the Federal Circuit.

34. All parties to this matter have electronic access to the Federal Circuit as well, so there is no loss of access to the courts or their process by having this appeal heard before the Court of Appeals for the Federal Circuit. Only the Appellant/Plaintiffs are restricted from accessing that ECF system, so the only party this creates any hardship for is the Appellant/Plaintiffs based on local ECF rules in the Federal Circuit, as such all of the licensed attorneys practicing in this matter have the ability to use ECF herein.

In Conclusion

35. This matter should proceed before the US Court of Appeals for the Federal Circuit because it directly pertains to US Patents, Illegally filed and then abandoned foreign instances of US Patents, and additionally illegally filed US Patents.

36. It further pertains to the US of Foreign Patents to strip a US Citizen of their IP rights in those jurisdictions by the use of the abandoned-patent tactic.

37. As such this matter is ripe for review before the Federal Circuit itself.

38. We therefore ask this, the Ninth Circuit to properly transfer this matter (14-17574) to the Court of Appeals of the Federal Circuit with all docket entries intact to facilitate renoticing and subsequent filings in the Federal Circuit, at which time this, the Ninth Circuit Court of Appeals can stay this matter or terminate it in favor of that filing in the Federal Circuit.

Dated this 27th day of March, 2015

/s/ Todd S. Glassey

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