14-17574 - Glassey and McNeil v Microsemi Inc et Al - Informal Mini Brief

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THE US COURT OF APPEALS
FOR THE NINTH CIRCUIT

Todd S. Glassey In Pro Se, and Michael E. McNeil In Pro Se,	**Case No.: 14-17574**
Appellants,	**INFORMAL APPELLANT'S OPENING BRIEF - per FORM12**
vs.	
Microsemi Inc, et Al;,	
Appellees	

INFORMAL BRIEF OF APPELLANT

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1. Jurisdiction

1(a) Timeliness of Appeal or Petition:

  (i) Date of entry of judgment or order of district court:

#185   12/29/2014: DISMISSAL ORDER

#186   12/29/2014: JUDGMENT IN A CIVIL CASE

1(b)   Please attach one copy of each of the following:

1.   The order(s) from which you are appealing:

(See EXCERPTS attached.) - Notice Of Appeal contains this

2.   The district court's entry of judgment:

(See EXCERPTS attached.) - Notice Of Appeal contains this

3.   Have you ever had another case in this court?

1. YES, enforcement denial review on US Bankruptcy Court Sale Order to Appellants

    (01-54207-MM and 05-01604-RMW both from San Jose's USBC and USDC).

2. Did the trial court incorrectly decide or fail to take into account any facts?

2. Yes the District Court dismissed without any substantive review every single question put to

the Court about underlying frauds, their damage, what PHASE-II IP controls in America and

would control in the foreign Abandoned instances of US6370629 and how GLASSEY and

MCNEIL have Copyright Enforcement Claims against the PHASE-II IP which will last

through 2085;

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A Simple Review before the Court of the Settlement will show clear enforcement rights from the PATENT to Appellant/Plaintiffs including the creation of both direct and indirectly created Copyright-Protected computer programs - The District Court blocked this review

3. A review of the Settlement agreement shows it as a BI-LATERAL RIGHTS ASSIGNMENT. There are two ASSIGNMENT STATEMENTS, the Primary Assignment for the Umbrella Patent's filing, that being the merged '992 patent and the new US6370629 patent set up USE OF THIS SPECIFIC ASSIGNMENT OF IP and not for any other part of the PHASE-II IP.

4. The first Statement then is the Release against '992 IP and the assignment of the entire Patent (as the Object of Management in the FOCUS of this Management Relationship the Settlement Contract created). The Second One is the "Assignment within the limited scope of PHASE-II IP inside that patent for which Microsemi held no right, back to Appellant's meaning that the PHASE-II Intellectual Properties contained inside US6370629 are Appellant/Plaintiffs.

5. Because the only limited standing Defendant Microsemi holds on Phase-II IP is its limited resale and use within the scope of the 992 patent and its support-releases, all other uses naturally fall to Appellant/Plaintiffs.

6. Additionally whether Appellant/Plaintiffs hold enforcement rights against the Patent itself or its sublicensing, they hold natural Copyright Protected PHASE-II Technology inoculated against all of the key Standards Groups, and most all of the key records management timestamping and audit entities and so there is publication history on the copyrighted portions of these rights as well.

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7. The District Court refused to review and dismissed the whole-cloth questions of whether there were derivative or natural rights for Phase-II IP within the Standards Community and what its effect on Appellant's rights that caused.

US Governments claims of Sovereign Immunity is a misplaced Argument because PHASE-II IP controls Voting In America

8. The District Court also inappropriately relied on Sovereign Immunity here.

9. This case breaks Sovereign Immunity because to use it the Government has to sidestep a fraud occurring in several foreign nations pertaining to the instances of US6370629 filed there without releases.

The District Courts Attitude: dismissal with vitriol shows the Court bias.

10. Plaintiffs/Appellants assert the Trial Court painted an improper picture to further discredit the Plaintiffs, and, in denying the Plaintiffs motions to confirm the Frauds, and Plaintiff's losses, the Plaintiffs assert and allege that the Court itself forgave the fraud as ***correct and appropriate*** by refusing to review the evidence of the fraud, its effects and the real and derivative losses before the court itself.

Improper and derogative reference to USBK and the lies the US DoJ sold Plaintiffs in the sale of assets from 01-54207-MM CertifiedTime Inc

11. The other matter, the Courts use of the effort to enforce a sale order from the US Bankruptcy court or the refusal of any US Court "to even allow the review the Sale Order of USBK 01-54207-MM" is equally troubling.

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12. The US DOJ as well as all of the US Courts refused to review or set aside US Bankruptcy Sale Order in 01-54207-MM. Both the Courts and the US DoJ refused to allow the enforcement of that sale order as well for an unknown reason. Today the Sale Order sits as a Glassey/CertifiedTime Asset.

Court blocked review of Constitutional Issue: Congress never intended the Sovereign Immunity Statute to be used to cover-up responsibility for "Government Created IRC165 and other Fraud Losses in Foreign Nations".

13. The abuse of Sovereign Immunity in this matter is serious. Sovereign Immunity which was claimed by the US Government in this matter was never intended to be used by the Administrative Branch of the US Government to cover up Intellectual Property Frauds in seven foreign nations. Frauds which create significant enforcement losses for US Tax Payers to bear alone under IRC165/2009-09 and 2009-20 updates. Likewise in addition to blocking the review and acknowledgement of this loss, the District Court refused to allow PHASE-II IP to be properly defined and its own use of systems reliant on PHASE-II IP to be disclosed; and the District Court blocked any review or ruling from the DC as to what APPELLANT/PLAINTIFFS current enforcement rights against the US patent and its copyright protected Phase-II Technologies; and

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District Court Motions: Appellant/Plaintiffs moved the District Court for a Sufficiency Test for a newly recovered Patent Settlement Agreement: We can finally apply TALBOT and GELLMAN to see if the Contract is void or not.

14. The DDI contract was withheld and the existence of it denied by Microsemi from November 1999 when it was signed until their attorney John Burton we believe insisted they finally turn it over to Appellant/Plaintiffs. That happened February 26th 2013. Until that time Microsemi's formal position was Appellant/Plaintiffs had no rights pertaining to anything which they may hold a patent on.

15. Appellant/Plaintiffs moved for the review of that Settlement Agreement, its terms and conditions, and to apply both Federal and State of California Contract Breach standards as well as Rescission Standards as requested in that review.

16. The District Court blocked without providing that review the Sufficiency Hearing Motions (the Talbot and Gellman Reviews requested).

17. The district court in this denied and refused to hear each Motion pertaining to various aspects of "reviewing specific sufficiency and fraud claims" around the obtaining and enforcement of rights for US6370629; and to review the effect of unauthorized filings in foreign jurisdictions of US6370629 as well as their abandonment and total enforcement losses. And here again, the District Court blocked the review of the Seven Abandoned instances of US6370629 or Appellant/Plaintiffs fraud losses based therein; Further that the District Court did so by staying and dismissing without consideration any of the six motions submitted to the Court for review on the underlying fraud claims.

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District Court Motions: Appellant/Plaintiffs moved for a review of alleged PATENT FILING FRAUD ISSUES in re US6393126 and US6370629

18. The District Court denied Motion to review US6393126 for its Inventorship or any releases being executed for any of the US6393126 patents and most of the US6370629 filings. Since there is a TTI Settlement which doesn't talk to any patents, a TTI Patent would be a problem if it didnt properly list the actual inventor(s) of this derivative of the TTI and the TTI itself. The US6393126 patent as such is what that specific review for release for its filing, was requested for and was denied.

Motion Details: Appellant/Plaintiffs moved for a review defining the actual components of PHASE-II IP which are protected under US6370629. The District Court refused to allow the Definition of what PHASE-II IP is or how Plaintiffs are to assert rights against it today?

19. The Settlement agreement is incomplete. It has missing pieces which render it void based on the TALBOT v QUAKER STATE OIL REFINERY standard from the 1938 Supreme Court session. The Court blocked the answering of that specific question. The Trial Court dismissed and blocked any process to formally complete the Settlement Agreement's missing components (i.e. ordering the creation of the missing "Definition of rights rider" , "the enforcement terms agreement", "the support agreement for the foreign instances", and "the final release against the instances filed in Canada, the EU, Brazil, South Korea Australia, and Japan without proper releases or power-of-attorney assignments"; The Court erred in this.

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Motion Details: Appellant/Plaintiffs moved the District Court for a review of who the actual INVENTOR of US6370629 or US6393126 are.

20. In the case of US6393126, Appellant Glassey alone is the sole inventor of the TRUSTED TIMING INFRASTRUCTURE or "TTI" and as such is the true inventor.

21. Appellants have been lead to believe that today this patent controls the NSA's PRISM and GCHQ timestamping regimen based on their use of the preferred systems - which happen to infringe. Meaning that the Section 8 terms of the TTI Settlement Agreement "properly control the use of all of the PRISM System Data under the California Law Clause therein" something we can easily see US DoJ asking for a classified status for.

22. The District Court dismissed without any review of the US6393126 patent without review we assume because it in fact probably does control aspects of the PRISM and FBI Stingray Evidence-Capture and Timestamping-of-evidence service systems.

23. We state for the APELLLATE COURT "that a classified national security interest" for our IP Rights does not constrain or remove the US Government's requirement to pay properly for its use - and to some extent exclusive use, of said properties.

Motion Details: Appellant/Plaintiffs moved the District Court for a review of illegally filed US6370629 instances in Brazil, Japan, Korea, Australia, Canada and the EU

24. Plaintiffs asked for and documented a need to review the releases signed and the authorization to abandon those filings once done or what that did to Plaintiff's abilities to

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protect other Phase-II related IP's in those jurisdictions. The refusal to review whether

Microsemi filed improper documentation alleging Power of Attorney for Foreign Patent

Filings in Japan, Brazil, Canada, South Korea and the EU were forgeries under Gellman[1] and

related standards;

25. As such, the Court refused to review that Microsemi breached the settlement and continued

this denial process to the current period to stop anyone's, even their own shareholders,

enforcement of any rights against US6370629.

Motion Details: Appellant/Plaintiffs moved the District Court for a MOTION FOR PARTIAL SUMMARY JUDGMENT RE "FRAUD LOSS." pertaining to the US6370629 and US6393126 patent families

26. The Appellant/Plaintiffs' filed a Motion for a determination of "what the loss was relative to

what they would have had today, had the DATUM fraudulent movement of their US6370629

Patent to DATUM and its extortive Settlement happened?"

27. This is a very simple question, if they didnt have the Datum Fraud to address they would still

own all of the US6370629 enforcement rights, and through that this is a simple question to

answer, but it requires the creation of an accepted enforcement model for US6370629,

something no one seems to want to be produced today.

28. But in this matter it is key because under GELLMAN (*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

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[1] *Gellman* v. Telular Corp. (Fed. Cir. 2011).

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(3d Cir. 1939) there are both requirements for the Content and Terms of the Settlement Agreement and its enforceability to either side. Specifically the Notice of Infringement and Process for the Shared IP Rights holders interaction with each other pertaining to IP licensing and communication processes.

29. As such Plaintiffs' reliance on *Gellman* and *Talbot* proper, because under the Underlying Fraud Theory Plaintiff's held all control on PHASE-II IP they were entitled to a GELLMAN review over the original Settlement Agreement to determine its proper effect with regard to the Foreign Filings, and equally per Talbot as to whether the Actual Settlement met the Talbot Sufficiency Standards or not. .

30. The Courts review of the Contract itself would show that the SETTLEMENT has no provisions for this and shortly after the signing the Contact Points named for both sides ceased to be employed in those roles leaving the Contract Contacts Process void as well; The District Court in its ruling refused to allow the actual review of the contract's provisions.

31. Plaintiff's further applied for a review of whether as part of that Taking or Conversion a Sherman Act violation and whether a repeated set of Clayton acts happened.

32. The Court refused to review the underlying facts pertaining to this claim dismissed without ruling on any motion in this matter.

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District Court Motions: Appellant/Plaintiffs moved for a review to qualify and quash the Enforcement Blockage from US DoJ in re Sale Order from US BK 01-54207-MM as a Taking

33. Plaintiffs sought in their Fraud Review in addition to the other claims, the full five point two million dollar fraud loss plus the loss of all fees associated in any and all enforcement actions therein under the US BK 01-54207-MM;

34. This claim is based on what is alleged against the US Courts as the fraudulent sale of property which the US DoJ blocked the enforcement of after sale of the instrument conveying title to Plaintiffs.

35. The argument is that the US Government as both the Party selling the property through the sale order of the US Bankruptcy Court, and being the party refusing to enforce any laws agyainst it as the US DoJ, or in the US Courts division of the US Government, to allow in the District Court's refusal to "review of the Sale of this Property to Plaintiffs" caused a full catastrophic loss. In preventing the recovery of the Property the Appellant's are entitled to a full loss against the full enforcement value of the Sale Order.

36. The ultimate concept is that THERE IS ONLY ONE US GOVERNMENT... One Constitution, and the COURTS and the ADMINISTRATIVE, and LEGISLATIVE Branches are all tied to the same set of Laws.

Motion Details: Appellant/plaintiffs moved the District Court for a review of the "Alleged US DoJ Interference" which was blocked and dismissed with prejudice

37. Additionally the Plaintiffs/Appellants allege that because of the implications of private citizens owning controlling rights in digital timestamping as it is performed on the Internet

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today that the US Government has been actively interfering with Plaintiffs and Plaintiff's attorneys operations for some number of years now; And

38. In dismissing the complaint the USDC trial court refused to review any Interference with Plaintiff/Appellants enforcement actions by US DoJ and other agencies as a part of a Passive Takings Complaint against USG; Or the effect on USG blocking resolution of fraud losses in foreign nations based on illegally filed and abandoned instances of US63706296.

3. Did the trial court apply the wrong law?

39. Generally, the Trial Court didnt apply any Law. They denied motions with no explanation as to why they were denying them and dismissed the matter "whole clothe" eliminating any review.

NAFTA, TRIPS, PCT and Antitrust/International Antitrust Act Complaint and Prosecution refusal's by US DoJ

40. The Court also failed to apply any of the NAFTA, TRIPS or related Trade Agreements Fraud Provisions as are required in Foreign Patent Matters;

41. As such, the Court dismissed without any review of the underlying frauds and all of the subsidiary use-without-compensation complaints, executing a Public Taking without Payment in the Courts based on their refusal to enact the required Judicially Initiated Prosecution (JIP) the State of California Courts and others were petitioned to do in the actions herein.

District Court Motions: Under their Natural and Derived Copyright Standings Appellant/Plaintiffs moved the District Court for a specific

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ruling pertaining to the establishment of their Performance Rights standing

42. Appellants applied for a review of their Copyright Standing both naturally and based on their derivative standing under the Patent since independent Copyright Controlled Technology Specifications in fact exist.

43. The Court's refusal to review whether Appellants IP rights emanated both from within the Patent Filing and subsequent Copyright Controlled Publications prevented the answering of why Appellant's are not vexatious litigants, just IP owners trying to enforce a fraud claim against the very standards organization who created hundreds of millions of infringers.

Motion Details: Appellant/Plaintiffs moved the District Court for a review of the effects of Defendant IETF actions relative to its creating millions of infringers

44. Since the Defendant IETF is a standards agency, their including PHASE-II copyright and patent protected IP in their Standards Specifications will cause anyone writing a PROGRAM to that STANDARD to infringe when that program is executed. As such the Copyright Protected IP stolen by the IETF was properly controlled both by the initial patent and the subsequent copyright protected filings, and as such the IETF's argument is both specious and moot. They [IETF] in fact do use Phase-II IP's in many protocol standards, which Appellants enjoy Performance Right Control over based on their Copyright Standing which the District Court refused to review.

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Motion Details: Appellant/Plaintiffs moved the District Court for a ruling pertaining to Copyright "From Publication and discussion of the Algorithms Use" (as being identical to publishing a copyright Users Guide or like volume).

45. Plaintiffs hold Copyright Enforcement of Phase-II IP by its very publication in Standards Communities with statements about their licensing. The publication of the PHASE-II Specification inside the Patent constituted formal copyright protected publication and the derivative works attribution completed that.

46. The problem is whether through the Patent or the subsidiary and natural copyrights which flow out of the patents disclosure to the IETF, an act with published specifications for various parts of PHASE-II IP from the Patent itself in the IETF with GLASSEY/MCNEIL COPYRIGHT CONTROL exerted through that, as well as through independently copyrighted publications, today and in America for the next 85 years, the Appellant/Plaintiffs control PHASE-II IP when it is used in Computer Programs.

47. The US DoJ on behalf of all of the US Government apparently blocked prosecution of frauds, and if it did so, then the goal would likely be to enable it (as the US Government) to use and prevent Appellant/Plaintiff's recover of their Property.

48. In that blocking action, the key concept to address that what is absolutely undeniable is that "Whoever Owns the Phase-II IP in all instances it is NOT the US Government", and that as a result of that "alleged taking" is that "the US Government continues to buy billions of US

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Dollars worth of infringing systems and components which are dependent or inoperable , and

for which none has a license for their use of Appellant's PHASE-II IP's"; and

49. Finally for the Courts themselves to recognize that Appellant's PHASE-II Digital

Timestamping controls are woven through and provide the heart of all DIGITAL VOTING

SYSTEMS in use in the US since 2003 or there about.

4. Did the trial court fail to consider important grounds for relief?

50. Yes, the Trial Court ignored the claims presented and ruled orthogonally to them dismissing

without review in any substantive manner on all matters before it.

51. But especially *the District Court refused to hear or rule as to what PHASE-II IP*

technology is, or in any ruling as to how Plaintiffs can enforce against it if at all, and

based on that Ruling, what their losses are for the fraudulent assignment and then sham-

litigation extorted settlements under IRC165 and the Madoff Extensions;

District Court Motions: Appellant/Plaintiffs moved the District Court for the empanelling of a 3 Judge Panel because Phase-II IP control Apportionment in the US

52. The Appellants moved for the empanelling of a Three Judge Panel because PHASE-II IP

controls the actual acts of Voting in the US and so totally controls apportionment under 28

USC 2284. The Trial Court refused to review whether PHASE-II IP was a key component in

US Voting Workstations and as such controlled Apportionment at the most rudimentary

levels possible.

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53. *__If Phase-II Timestamping is key to Voting, Voter Certification, and any part of the__*
   __tabularization of US or State Voting, then it is 100% in control of Apportionment,__ and
   something that must under 22 USC 2284 be heard before a Three Judge Panel when
   demanded by any party in such a Court Action.

5.   Are there other reasons why the trial court's decision was wrong?

54. Yes, in 1998 Appellant's owned all of what is called PHASE-II IP and what would become
   the US6370629 patent for the most part.

55. Because they own a fraction of that today they are entitled to a loss against the difference
   between what they have today and what they would have had sans this drama.

56. That is a number which today is significant to the US Public since it happens as a loss in
   foreign nations, making the US Tax Payer responsible for that loss.

57. These losses are pertaining to fraudulently filed and then abandoned instances of US6370629
   in Australia, Japan, South Korea, Brazil, Canada, and the EU. They also pertain to any and
   all filings of US6393126 as well Appellants alleged in their complaint.

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District Court Motions: Appellant/Plaintiffs moved the District Court for a review of their IRC165 acceptable losses and asked for the Court's interpretation of the Will of Congress in the 2009/09 and 2009/20 process noted for unprosecuted fraud loss filings under IRC165

58. Congress in creating the MADOFF Exemptions to the Internal Revenue Code ("IRC") ss 165 Fraud Loss Statutes (aka IRC165-2009/09 and 2009/20) created a new set of responsibilities for the Court and Law Enforcement, both have shirked here.

59. Under Title 18, the Courts cannot knowingly allow the Will of Congress to be impugned by the US DoJ and so the US Department of Justices refusal to enforce a fraud claim against a unlawful patent filing for a US Citizen in another country constitutes a formal taking and a willing reassignment of that Intellectual Property under the Fifth Amendment to those parties the US Government allows as Actors to perform such Acts.

6.   What action do you want the court to take in this case?

60. *RELIEF 1 - Send this back to the DC with a finding such that the DC hears the fraud loss matters, reviews the sufficiency of the contract and properly reviews Appellant's standing to enforce under per the DC's impending ruling either Patent or Copyright Protections and how those enforcements work.*

61. *RELIEF 2 - Remove any and all subsidiary litigations in the California Courts merged with this ruling as well so the entire 13+ years of this fraud loss can be adjudicated in full finally including any pertaining to CFP-05-505101 Glassey v Amano;*

62. *RELIEF 3 - Appoint an administrative officer to start an Infringement Audit into both Classified and non Classified infringements outside the US Government including both*

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Legislative and Judiciary for Phase-II IP enabled systems so a full and reasonable "Government Use Profile" can be developed for PHASE-II Technology used inside the Government's infrastructure and Programs for loss and licensing calculations.

63. *RELIEF 4 - Allow immediate Infringement Enforcement for Copyright Program Infringements against Computer Programs containing PHASE-II IP by all named Defendants in the 14-CV-03629-WHA matter with the addition of the AMANO CORPORATION of Yokahama Japan (275 Mamedo Cho Parkway, Yokahama as one of the MICROSEMI Reseller DOES.*

64. *RELIEF 5 - Identity the VOTING WORKSTATIONS used in all US Elections today to be infringers on the PHASE-II Copyright Enforcement and those rights which would have been enforceable if there was no Settlement bifurcating the enforcement of the US6370629 patent.*

65. *RELIEF 6 - Identify the THALES GROUP Timestamp Server as the TTI Settlement's specific product and order the District Court to properly constrain its operations for all users per terms 8.x of that Contract.*

8. Do you intend to represent yourself?

66. Hopefully not. If the Court would consider appointing counsel that would be excellent.

9. NINTH CIRCUIT ECF PROOF OF SERVICE

67. I certify that this matter was filed through the Ninth Circuit's Electronic Case Management System and that a copy of this brief and any attachments was sent to ALL of the Email Addresses WITH RETURN RECEIPT REQUESTED for all opposing counsel including the US Government, and that the State of California was formally served by US Mail from the attached PRIORITIY MAIL RECEIPT. Dated this Saturday, May 02, 2015 - /s/ Todd S. Glassey, In Pro Se

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/s/ Todd S. Glassey

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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

MEMORANDUM of NIMMER ON COPYRIGHT FOOTNOTES "ALL IN SUPPORT OF APPELLANTS HOLDING BOTH PATENT AND COPYRIGHT ENFORCEMENT RIGHTS" IN FEDERAL CLAIMS MATTER #15-133

Memorandum of Points and Authorities - NIMMER Produced:

1. The purpose of this lengthily memorandum is to provide a set of concise references to the concept and precedent "that copyright protected phase-II IP rights also provide enforcement when the copyright was derived from Patent Protections which were reassigned to Appellant/Plaintiffs as Sole Owners of Phase-II IP's".

2. These are in fact Nimmer's notes from the 2015 update to his and his brothers masterful work.

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The Nimmer Footnotes

1. The following Case References are derived from the recently updated NIMMER supporting arguments list.

2. This document size may exceed Rule 32 Maximums and for that we ask the Court's indulgence.

Why NIMMER and Not Goldstein

3. Since Nimmer (and Goldstein) are the number one specialists and Mr. Goldstein is a member of the Stanford Law School and personally refused to help Appellant's with this matter, and since his School itself is one of the DOES in this matter we refer to NIMMER here.

4.

Memorandum of Points and Authorities - Appeal Brief - Glassey/McNeil v Microsemi

5. The Memorandum of Points and Authorities are tied to issues of both Copyright and Patent Protections as well.

6. The reason for narrowing the focus of this reference was that since the Appeal is about the Court's wholesale refusal to address the issues presented to it. Issues like whether the original patent filing was a Sherman Act violation and whether it was legally transferred to Datum or not? Further how the settlement was obtained, whether the settlements content meets the Talbot and Gellman standards for its components and functionality), and finally to the review of the alleged bad acts including international antitrust actions.

1   7. Because the Court refused to review any claims, this brief is only tied

2   to the Intellectual Propriety issues of the original assignment, rights

3   under that and the re-assignment from the initial assignment of the

4   sole-ownership of the Phase-II IP under the Umbrella of the Patent.

5

6
Computer Programs are Copyrightable - even if they contain Patent
7
Protected Algorithms

8   3. "Computer Programs are in fact copyrightable, and when they are derived

9   from a PATENT PROTECTED Algorithm they extend that Patents enforcement

10   period the full Copyright Period"

11   n1 17 U.S.C. §§ 101-914 (1988 & Supp. V 1993).

12   n2 *Id.* § 102(b).

13   n3 *See, e.g.*, Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240,
14   1246 (3d Cir. 1983), *cert. dismissed*, 464 U.S. 1033 (1984); Williams Elecs., Inc.
           v. Artic Int'l, Inc., 685 F.2d 870, 873 (3d Cir. 1982).

15
16   - **"holding that a computer program is a literary work and its source and object codes are therefore copyrightable"**;
         - **"finding that the code of a video game is copyrightable"**;

17
18   n4 *See Franklin*, 714 F.2d at 1249 (holding that a computer program is a literary
           work and its source and object codes are therefore copyrightable); *Williams*, 685
19   F.2d at 876-77 (finding that the code of a video game is copyrightable).

20   - **"if the non-literal structures of literary works are protected by copyright; and if computer programs are literary works, as we are told by the legislature; then the non-literal structures of computer programs are protected by copyright"**;
21

22
23   n5 *E.g.*, Gates Rubber Co. v. Bando Chem. Indus., Ltd., 9 F.3d 823, 841 (10th
           Cir. 1993); Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 702 (2d
24   Cir. 1992);

25   - **copyright infringement can occur without copying the literal elements of the program)**;

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Johnson Controls, Inc. v. Phoenix Control Sys., Inc., 886 F.2d 1173, 1175 (9th Cir. 1989) (acknowledging that copyright infringement can occur without copying the literal elements of the program); Whelan Assocs., Inc. v. Jaslow Dental Lab., Inc., 797 F.2d 1222, 1248 (3d Cir. 1986) (holding that copyright protection extends beyond a program's literal code to its structure, sequence, and organization), c*ert. denied.*, 479 U.S. 1031 (1987); Digital Communications Assocs., Inc. v. Softklone Distrib. Corp., 659 F. Supp. 449, 462 (N.D. Ga. 1987) (granting copyright protection to the status screen, or main menu, of a program);

6
7

Derivative Works of Copyright Protected Programs are equally protected

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- finding that a computer program developed from the source code of another program is a derivative work that constitutes an infringement of the plaintiff's copyright.

10
11

SAS Inst., Inc. v. S & H Computer Sys., Inc., 605 F. Supp. 816, 830-31 (M.D. Tenn. 1985)

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Altai, 982 F.2d at 712 (stating that computer programs are literary works entitled to copyright protection and rejecting a suggestion that patent protection would be more appropriate); Lotus Dev. Corp. v. Borland Int'l, Inc., 788 F. Supp. 78, 91 (D. Mass. 1992) (discussing the relationship between patent and copyright protection in computer programs), *rev'd on other grounds*, No. 93-2214, 1995 WL 94669 (1st Cir. Mar. 9, 1995). *See generally* Duncan M. Davidson, *Protecting Computer Software: A Comprehensive Analysis*, 1983 Ariz. St. L.J., 611, 617-18, 634-750 (discussing the application of patent, copyright, and trade secret protection to computer software);

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n11 *See generally* Office of Technology Assessment, U.S. Congress, Finding a Balance: Computer Software, Intellectual Property and the Challenge of Technological Change 183 (1992); Raymond T. Nimmer & Patricia A. Krauthaus, *Copyright in the Information Superhighway: Requiem for a Middleweight*, 6 Stan. L. & Pol'y Rev. 25 (1994).

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Algorithms are Patentable. Computer Programs implementing those patent protected algorithms are Copyright Protectable

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4. "While an Algorithm - a 'fact' cannot be copyrighted its use in a COMPUTER

PROGRAM can be"

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n12 *See* Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 344-45 (1991) (stating that it is a fundamental principle of copyright law that facts cannot be protected); Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 156-57 (1989) (concluding that patent law requires the existence of publicly accessible and usable information).

5. The DDI Settlement Terms provided for the REASSIGNMENT (as a casting of the "we Acknowledge your ownership" statement that immediately follows the initial assignment of all rights for the limited use of PHASE-II IP in a PATENT for US Filings,

n13 *See* Jessica Litman, *The Public Domain*, 39 Emory L.J. 965, 972-75 (1990) (discussing how the law determines the owner of intellectual property and explaining the property protected by the patent, trademark, and copyright systems).

The traditional views on Copyright are changing with the Digital Revolution!

6. Traditional views of Copyright Protection in Computer Programs are changing based on the blurring of the lines between Copyright Protected Software Products and their Patent-protected Algorithms".

n19 *See* 17 U.S.C. §§ 107-120 (limiting the exclusive copyright protection granted in 17 U.S.C. § 106). Here, however, as in many other aspects of computer software copyright, the technology forces a blurring of lines. An emerging line of authority holds that a "copy" occurs whenever a program shifts from one form of computer memory to another. *See* MAI Sys. Corp. v. Peak Computer, Inc., 991 F.2d 511, 518 (9th Cir. 1993) (concluding that " 'copying' for purposes of copyright law occurs when a computer program is transferred from a permanent storage device to a computer's RAM"), *cert. dismissed*, 114 S. Ct. 671 (1994). This occurs when a user turns on the computer and creates what amounts to a de facto right to control the use of the program in the computer.

- "holding that a copyright on a book about bookkeeping systems does not secure an exclusive right over the use of the systems described in the book and noting that securing an exclusive right over the use requires the

employment of the patent system or else the use is given to the general public"

n20 *See* Baker v. Selden, 101 U.S. 99, 103-05 (1879)

- **explaining that "a copyright . . . bars use of the particular 'expression' of an idea in a copyrighted work but does not bar use of the 'idea' itself"**

n24 *See Kalpakian*, 446 F.2d at 741 (explaining that "a copyright . . . bars use of the particular 'expression' of an idea in a copyrighted work but does not bar use of the 'idea' itself").

What happens when the infringement is a total attack by inclusion of the infringing IP in a work like a standard which will cause millions of infringements over the lifetime of that standards use?

7.   Appellant's raised the Question of "when a Standards Agency takes a Patent and

Copyright Protected Intellectual Property and includes it without authorization and then

hides behind "that the entire world now is dependent on the use of the Stolen IP to justify

its continued functional immunity for their IP frauds, this sets aside the arguments of

natural technological evolution and brings up simple IP theft.

n26 *See, e.g.*, Frybarger v. IBM, 812 F.2d 525, 529-30 (9th Cir. 1987) (holding that there is no protection for features of a video game that are common treatments of the subject); Atari, Inc. v. North Am. Philips Consumer Elecs. Corp., 672 F.2d 607, 616 (7th Cir.) (opining that "stock literary devices" that are standard in the treatment of a given topic are not protectable by copyright), *cert. denied*, 459 U.S. 880 (1982).

8.   What happens when the Parties who claim something is natural evolution stole it originally?"

n27 *See* Atari, 672 F.2d at 616 (noting that in the context of literary works, the phrase "*[s]cenes a faire* refers to 'incidents, characters or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic' " (quoting Alexander v. Haley, 460 F. Supp. 40, 45 (S.D.N.Y. 1978))).

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US6370629 was ahead of the common use and knowledge of these location-based requirements, and as such properly issued after nine (9) office actions.

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    35 U.S.C. § 103 (1988).

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    This "nonobviousness" standard requires an element of originality that far exceeds the limited originality required under copyright law. *See* Graham v. John Deere Co., 383 U.S. 1, 14-19 (1966) (discussing the replacement of the invention standard with the obviousness standard).

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    n30 *See* Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1002-04 (1984) (holding that the owner of a confidential trade secret has a property right that is protected by the Takings Clause of the Fifth Amendment); *see also* 1 Roger M. Milgrim, Milgrim on Trade Secrets § 1.01[1] (1994) (examining the requirement of secrecy for acquiring trade secret protection); Raymond Nimmer, *supra* note 7, ¶ 3.02[1] (discussing the classification of trade secrets as a form of property with a property interest contingent on confidentiality).

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If Base Technological Tools were not 'that' i.e. were not common basic tools at the time the Patent or Copyright Was issued against their protection they are protected entities which preceded their being adopted at such a rate that they are awarded the state of Basic Common Tools.

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    n37 *See* Gottschalk v. Benson, 409 U.S. 63, 67 (1972) (noting that because mental process and abstract intellectual concepts are the basic tools of scientific and technological work, they are not patent-eligible subject matter); Pamela Samuelson, Benson *Revisited: The Case Against Patent Protection for Algorithms and Other Computer Program-Related Inventions*, 39 Emory L.J. 1025, 1032 (1990) (stating that Congress has named four categories of subject matter as eligible for patenting: machines, manufactures, compositions of matter, and processes).

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    n38 Act of Dec. 12, 1980, Pub. L. No. 96-517, § 10(b), 94 Stat. 3028 (codified at 17 U.S.C. § 117 (creating § 117 of the Copyright Act and adding provisions authorizing copying of computer programs)); *see also* CONTU Report, *supra* note 34, at 1 (recommending that copyright law be amended to make it explicit that computer programs are a proper subject matter for copyright).

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Appellent's Location Based Service Intellectual Properties are today a part of everything, but when they were invented by Appellant Glassey they were so far ahead of the Curve they were ignored.

n39 *See* Diamond v. Diehr, 450 U.S. 175, 187 (1981) (concluding that "a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula, computer program, or digital computer"); *In re* Alappat, 33 F.3d 1526, 1545 (Fed. Cir. 1994) (en banc) (stating that a "computer operating pursuant to software" falls within the realm of patentable subject matter); In re Iwahashi, 888 F.2d 1370, 1374 (Fed. Cir. 1989) (finding that subject matter does not become nonstatutory under 35 U.S.C. § 101 (1988) just because it includes or is directed to an algorithm).

n40 *See, e.g.*, Pamela Samuelson et al., *Manifesto Concerning the Legal Protection of Computer Programs*, 94 Colum. L. Rev. 2308 (1994).

n41 *See* CONTU Report, *supra* note 34, at 12 (stating that while the Commission unanimously recommended legal protection for computer programs, they did not agree on the precise form the protection should take).

OTSOG: On The Shoulders Of Giants

9. In Re STANDING ON THE SHOULDERS OF GIANTS, the Control of the Timestamping features in US6370629 and the Copyright controlled derivatives are exactly "the Shoulders of Giants". Today most Operating Systems come with a LOCATION BASED SERVICE library which is both a Patent and Copyright Infringement against US6370629 and those Copyrights held exclusively by Appellant/Plaintiffs in the matter herein.

10. The question of whether today it is fair or not to allow the enforcement of the Appellant/Plaintiff's IP Rights is irrelevant to the larger issue of whether they legally control this Intellectual Property, its licensing and what that means relative to infringing systems (as to how many and what scope those infringements create).

n47 *See* Donald A. Marchand & Forest W. Horton, Jr., Infotrends: Profiting from Your Information Resources 1 (1986) (explaining that the United States has changed from an industrial economy to an information economy and to compete

successfully, "*information resources* must be produced, consciously used, and effectively deployed"); Sauvant, *supra* note 46, at 23 (discussing the growing of the service sector and the evolution of the information economy); Frank H. Easterbrook, *Intellectual Property is Still Property*, 13 Harv. J.L. & Pub. Pol'y 108, 109 (1990) (comparing intellectual property to physical property and concluding that both deserve legal protection); cf. Subcommittee on Economic Stabilization of the House Comm. on Banking, Finance & Urban Affairs, 98th

n50 *See* Lotus Dev. Corp. v. Paperback Software Int'l, 740 F. Supp. 37, 77 (D. Mass. 1990) (discussing the "OTSOG Principle" which recognizes that few works are actually original because they borrow elements and ideas from previous works). This theory was expressed by Sir Isaac Newton, who declared: " 'If I have seen further, it is by standing on ye Sholders of Giants.' " *Id.* (quoting Robert K. Merton, On the Shoulders of Giants: A Shandean Postscript 31 (1965) (quoting Letter from Sir Isaac Newton to Robert Hooke (Feb. 5, 1675/1676))).

IETF Fraud Allegations are key relative to Large Scale Infringements for Computer Programs in Network Infrastructure using Appellant/Plaintiffs Phase-III IP's

n54 *See, e.g.*, USITC Protection, *supra* note 44, at 10 (commenting on the susceptibility of certain industries to the large-scale duplication of goods for illegal sale).

n56 *See* Apple Computer, Inc. v. Formula Int'l Inc., 725 F.2d 521, 523 (9th Cir. 1984) (allowing an injunction to prevent the duplication of operating system programs); Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240, 1252, 1255 (3d Cir. 1983) (deciding that operating system programs are copyrightable), cert. dismissed, 464 U.S. 1033 (1984); Midway Mfg. Co. v. Strohon, 564 F. Supp. 741, 752 (N.D. Ill. 1983) (enjoining defendant from marketing a machine object code that was nearly identical to plaintiff's copyrighted program).

Non Literal Elements of Computer Programs are copyrightable

n57 Some cases have held that "nonliteral" elements, which relate to the program's organization, design, and method of operation, are copyrightable. E.g., Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 702 (2d Cir. 1992); Atari Games Corp. v. Nintendo of Am. Inc., 975 F.2d 832, 836 (Fed. Cir. 1992); Whelan Assocs., Inc. v. Jaslow Dental Lab., Inc., 797 F.2d 1222, 1248 (3d Cir.

1986), *cert. denied*, 479 U.S. 1031 (1987). Other cases deal with a new program code that produces similar user interfaces. *See, e.g.*, Manufacturers Technologies, Inc. v. Cams, Inc., 706 F. Supp. 984, 1002 (D. Conn. 1989) (finding that the defendant infringed the plaintiff's copyright by photographing and substantially reproducing the plaintiff's program screen); Digital Communications Assocs., Inc. v. Softklone Distrib. Corp., 659 F. Supp. 449, 465 (N.D. Ga. 1987) (finding that the status screen of a program is a copyrightable element of the program).

11. Phase-II IP today exists in both underlying Network Infrastructure, it is used to make decisions about connection-authenticity, to certify content sent over connections, and to provide flagging and signaling inside of Applications like Auction Control and Purchase-Control Systems.

n59 Some courts draw a distinction between two aspects of computer programs: (1) the aspect that appears on a computer screen or printout in the ordinary use of the program, and (2) the aspect that remains in computer memory during ordinary use, driving the activities of the computer. *See, e.g.*, *Altai*, 982 F.2d at 703 (stating that the screen display may be copyrighted apart from the computer program as an audiovisual work). However, like different chapters of a book, both aspects of a program can contain copyrightable expression and each is a part of a broader whole. Raymond Nimmer, *supra* note 7, ¶ 1.08, at 1-61. The legal issues pertaining to each aspect of the program may be different. *See, e.g.*, Stern Elecs., Inc. v. Kaufman, 669 F.2d 852, 856 (2d Cir. 1982) (defining expression in a context in which each use of a game involves both the player's participation and the program's images and sounds).

Roughly Analogous - Phase-II IP is inside everything today

n88 *E.g., Engineering Dynamics*, 26 F.3d at 1343-44; *see also Altai*, 982 F.2d at 704 ("To the extent that an accounting text and a computer program are both 'a set of statements or instructions,' . . . they are roughly analogous. In the former case, the processes are ultimately conducted by human agency; in the latter, by electronic means." (quoting 17 U.S.C. § 101)).

n89 *See* Act of Dec. 12, 1980, Pub. L. No. 96-517, § 10(a), 94 Stat. 3028 (codified at 17 U.S.C. § 117).

12. The Copyright Protected Global Keying System, the Relational Location Based Service model was properly inoculated into all of the major standards agencies with do-not-use notice to their legal departments.

n90 H.R. Rep. No. 1476, 94th Cong., 2d Sess., 53 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5670. "Section 102(b) is intended . . . to make clear that the expression adopted by the programmer is the copyrightable element in a computer program, and that the actual processes or methods embodied in the program are not within the scope of the copyright law." *Id.*

Copying the Code functionally uses it - copying is infringing as well - meaning the use of the code in production is a violation for each item usage

n111 E.g., *Apple*, 35 F.3d at 1442 ("Copying may be shown by circumstantial evidence of access and substantial similarity of both the general ideas and expression between the copyrighted work and the allegedly infringing work."); Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 701 (2d Cir. 1992) ("The plaintiff may prove defendant's copying either by direct evidence or . . . by showing that (1) the defendant had access to the plaintiff's copyrighted work and (2) that defendant's work is substantially similar to the plaintiff's copyrightable material."); Walker v. Time Life Films, Inc., 784 F.2d 44, 48 (2d Cir.) (noting that copying may be inferred when the defendant has access to the plaintiff's work and the defendant's product is substantially similar to the plaintiff's), *cert. denied*, 476 U.S. 1159 (1986) .

Copying can be inferred if the two works being compared functionally do the same thing in the same manner.

n112 *See* 3 Melville Nimmer & David Nimmer, *supra* note 15, § 13.01B, at 13-10 to 13-12 (stating that copying is rarely proved by direct evidence).

n113 Engineering Dynamics, Inc. v. Structural Software, Inc. 26 F.3d 1335, 134041 (5th Cir. 1994) (explaining that similarity can be used to establish both factual and actionable copying) , *opinion supplemented on denial of rehearing en banc*, 46 F.3d

Legal Precedent for a Finding of Infringement would occur if a Technology Standards was published which included infringing content in its publication.

n120 *See* Goldstein, *supra* note 72, § 7.21, at 9 (stating that if the challenged work tracks the original work verbatim, no direct proof of copying or of access to the original work is necessary to prove copying).

n121 *See* Raymond Nimmer, *supra* note 7, ¶ 1.03[4]a, at 1-23 (noting that "copying relatively common elements of a work may not infringe the copyright").

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n122 2 Goldstein, *supra* note 72, § 7.2.2, at 18.

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n123 *Id.* at 18-19 & n.32.

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n124 *See id.* (discussing the difficulty of proving that the defendant copied the other source and not the plaintiff's work).

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PHASE-II IP is the best method possible - meaning it is the most efficient manner of creating those location based functions for computer programs

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n125 *See* Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 708 (2d Cir. 1992) (noting that because "efficiency is an industry-wide goal . . . , it is quite possible that multiple programmers, working independently, will design the identical method employed in the allegedly infringed work").

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BECAUSE PROGRAMS can SKIN THE CAT in a number of Manners... if they accomplish the same goal - they potentially infringe!

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n130 *See* Whelan Assocs., Inc. v. Jaslow Dental Lab., Inc., 797 F.2d 1222, 1239 (3d Cir. 1986) (finding a computer program's copyright to extend beyond its literal elements to its detailed structure), *cert. denied*, 479 U.S. 1031 (1987); 3 Melville Nimmer & David Nimmer, *supra* note 15, § 13.03A[1], at 13-31 (stating that copying can encompass duplication of "the fundamental essence or structure" of another work).

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n131 *See* Johnson Controls, Inc. v. Phoenix Control Sys., Inc., 886 F.2d 1173, 1175-76 (9th Cir. 1989) (suggesting that the greater the similarity between nonliteral components such as sequence, structure, and user interface, the more likely a finding of substantial similarity for purposes of copyright infringement); Whelan, 797 F.2d at 1233-40 (citing SAS Inst., Inc. v. S & H Computer Sys., Inc., 605 F. Supp. 816, 822, 825-26 (M.D. Tenn. 1985)) (noting that structural and organizational similarities are highly relevant evidence for finding copyright infringement), cert. denied, 479 U.S. 1031 (1987).

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Infringement which can be proven should be eligible for summary judgment.

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n132 *See* Frybarger v. IBM, 812 F.2d 525, 528 (9th Cir.) (stating that summary judgment is appropriate when there is lack of substantial similarity of both ideas and expression), *cert. denied*, 459 U.S. 880 (1987).

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n133 *See* Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 708 (2d Cir. 1992) (conceding that identical works may result from external factors, even when each work is produced independently).

Infringement can be accomplished with external components to the program as well. So the entire Context must be Dissected by the Trial Court to properly analyze the Infringement

n134 *Compare Johnson Controls*, 886 F.2d at 1175-77 (finding infringement because of the substantial similarity in nonliteral components such as structure, sequence, and organization) *with Altai*, 982 F.2d at 708 (noting that externalities such as efficiency can cause similarities in programs) and Plains Cotton Coop. Ass'n v. Goodpasture Computer Serv., Inc., 807 F.2d 1256, 1260-61 (5th Cir.) (suggesting that external factors can cause similarities in programs), *cert. denied*, 484 U.S. 821 (1987).

PHASE-2 Timestamp Processing is protected in the US under US6370629 and Copyright Protections.

13. Phase-2 Timestamping Technologies are both patent protected and copyright protected as the most efficient method of end-node and event-instance authentication features in today's networking, and that this was a design decision made by the Architects of the Global Internet System long after the PHASE-II IP was properly protected by Copyright and Patent Publications.

Since IETF and the other Infringers were formally served and denied use of the PHASE-II Patent and Copyright protected Intellectual Properties the Infringement is Proper

n167 Beal v. Paramount Pictures Corp., 20 F.3d 454, 458 (11th Cir.) (stating that "copyright infringement exists only if protected expression is wrongfully appropriated"), *cert. denied*, 115 S. Ct. 675 (1994); Arnstein, 154 F.2d at 473 (stating that the trier of fact must determine whether "defendant took from plaintiff's works so much of what is pleasing to . . . the audience for whom such [works are] composed, that defendant wrongfully appropriated something which belongs to the plaintiff").

DOES the inclusion of INFRINGING WORK from a STANDARDS DOCUMENT constitute Infringement in the Derivative Product? Standards and Case Law says YES!

n209 *See id.* at 1239; *see also* SAS Inst., Inc. v. S & H Computer Sys., Inc., 605 F. Supp. 816, 830 (M.D. Tenn. 1985) (concluding from extensive and pervasive

evidence of the copying of the organization and structure of another program that there was copyright infringement); Meredith Corp. v. Harper & Row, Publishers, Inc., 378 F. Supp. 686, 688-90 (S.D.N.Y.) (finding that extensive paraphrasing and copying of the structure of a book constitutes copyright infringement), *aff'd*, 500 F.2d 1221 (2d Cir. 1974) (per curiam). *But see* Synercom Technology, Inc. v. University Computing Co., 462 F. Supp. 1003, 1013 (N.D. Tex. 1978) (finding that the order and sequence of data on computer input formats is idea, not expression).

n210 *See* Computer Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 705 (2d Cir. 1992) (criticizing *Whelan*'s definition of idea as "descriptively inadequate"); Atari Games Corp. v. Nintendo of Am. Inc., 975 F.2d 832, 839 (Fed. Cir. 1992) (stating that a "computer program contains many distinct ideas"); *see also* Engineering Dynamics, Inc. v. Structural Software, Inc., 26 F.3d 1335, 1343 (5th Cir. 1994) (endorsing the *Altai* abstraction-filtration-comparison approach), *opinion supplemented on denial of rehearing en banc*, 46 F.3d 408 (5th Cir. 1995).

Computer Programs as a hot spot in IP Protection Law and Practice

14. Computer Programs which perform some function have direct value and their competitive efficiency and performance are key aspects of their value.

n319 *See* Secure Servs. Technology v. Time & Space Processing, Inc., 722 F. Supp. 1354, 1357 (E.D. Va. 1989) (identifying certain features of the machines as crucial to interoperability).

n323 A related issue concerns whether copyright prevents so-called reverse engineering of computer programs, a methodology used in other technologies to discern the technical detail and secrets of unpatented technology in distributed products. Sega Enters. Ltd. v. Accolade, Inc., 977 F.2d 1510, 1514 (9th Cir. 1992). Learning such detail allows the creation of compatible products and technology. *Id.* at 1515. *See* Atari Games Corp. v. Nintendo of Am. Inc., 975 F.2d 832, 844 (Fed. Cir. 1992) (suggesting that reverse engineering is not per se copyright infringement).

n325 *See* Apple Computer, Inc. v. Microsoft Corp., 35 F.3d 1435, 1443 (9th Cir. 1994) (stating that "we use analytic dissection to determine the scope of copyright protection before works are considered 'as a whole' "), *cert. denied*, 115 S. Ct. 1176 (1995); Gates Rubber Co. v. Bando Chem. Indus., Ltd., 9 F.3d 823, 839 n.15 (10th Cir. 1993) (stating that "the other tests are artificially narrow and restrictive. Instead, the comparison must necessarily be an ad hoc determination of whether the infringed portion is a significant or important part of the plaintiff's code, considered as a whole"); Johnson Controls, Inc. v. Phoenix Control Sys., Inc., 886

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> F.2d 1173, 1176 (9th Cir. 1989) (capturing the "total concept and feel" of a program amounts to unlawful appropriation); Sid & Marty Krofft Television Prods., Inc. v. McDonald's Corp., 562 F.2d 1157, 1167 (9th Cir. 1977) (equating the substantial similarity test with capturing the "total concept and feel" of the plaintiffs' work (quoting Roth Greeting Cards v. United Card Co., 429 F.2d 1106, 1110 (9th Cir. 1970))).

Can the Copyright Protected functions of Location Based Services be added to other Programs and Systems, re-copyrighted and sold without payment to Appellant/Plaintiffs?

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> n333 *See* Computer Assocs. Int'l v. Altai, Inc., 982 F.2d 693, 714-15 (2d Cir. 1992) (discussing the de minimis exception, which allows for literal copying of insignificant portions that are demanded by functional limitations of the programmer's environment);

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15. The De minimis exemption is not applicable when the parties who infringed were the

entities defining the new standards - i.e. what everyone was to use as their baseline.

Those parties creating that Standards Practice are in fact infringers here and who have

integrated PHASE-II IP's belonging to Appellant's into any number of global Network

Standards such that any party using those technologies naturally infringes both on Patent

and Copyrights.

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> Warner Bros. Inc. v. ABC, 720 F.2d 231, 242 (2d Cir. 1983) (stating that the exception allows copying of a small, insignificant portion of the first work); 3 Melville Nimmer & David Nimmer, *supra* note 15, § 13.03[F][5], at 13-148 (discussing the de minimis exception); *see also Gates*, 9 F.3d at 833 (stating **that "in order to impose liability for copyright infringement, the court must find that the defendant copied protectable elements of the plaintiff's program and that those protectable elements comprise a substantial part of the plaintiff's program when it is considered as a whole"**); Autoskill Inc. v. National Educ. Support Sys., Inc., 994 F.2d 1476, 1497 (10th Cir.) (**upholding the trial court's finding of infringement when differences between the copyrighted and infringing educational software were "not pedagogically significant**"), *cert. denied*, 114 S. Ct. 307 (1993); Data East USA, Inc. v. Epyx, Inc., 862 F.2d 204, 209 (9th Cir. 1988) (finding no infringement when a video game scorekeeping method was similar but "inconsequential").

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Does Building a Program that uses Location Based Services as designed under Appellants work and IP Right Protections bring those programs into the Standing of CO-COPYRIGHT HOLDERS?

n351 *See Apple*, 35 F.3d at 1445 (discussing the limitations imposed upon GUI programmers by such considerations as computer speed and power, the goal of making the product "user-friendly," and related environmental and ergonomic factors), *cert. denied*, 115 S. Ct. 1176 (1995); *see also* Raymond Nimmer, *supra* note 7, § 1.04, 1-28 (discussing how the computer programmer does "[n]ot benefit from the aesthetic appeal of the code, but only from the performance of the program").

n360 *See* Brown Bag Software v. Symantec Corp., 960 F.2d 1465, 1472 (9th Cir.) (stating that copying may be shown by circumstantial evidence and substantial similarity), *cert. denied*, 113 S. Ct. 198 (1992).

Dated this Saturday, May 02, 2015

/s/ Todd S. Glassey

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NINTH CIRCUIT ECF PROOF OF SERVICE

1. I certify that this matter was filed through the Ninth Circuit's Electronic Case Management System and that a copy of this brief and any attachments was sent to ALL of the Email Addresses WITH RETURN RECEIPT REQUESTED for all opposing counsel including the US Government, and that the State of California was formally served by US Mail from the attached PRIORITIY MAIL RECEIPT. Dated this Saturday, May 02, 2015 - /s/ Todd S. Glassey, In Pro Se

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☐ 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):
  Dissmissal with Predjudice

☒ 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 _____   /s/ Todd S. Glassey _____
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).

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4   IN THE UNITED STATES DISTRICT COURT

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6   FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 TODD S. GLASSEY and MICHAEL E. MCNEIL,

9   Plaintiffs,   No. C 14-03629 WHA

10   v.

11 MICROSEMI INC, US GOVERNMENT,   **ORDER GRANTING MOTIONS**
PRESIDENT OF THE UNITED STATES,   **TO DISMISS, STRIKING**

12 STATE OF CALIFORNIA, GOVERNOR BROWN, **SECOND AMENDED**
THE IETF AND THE INTERNET SOCIETY,   **COMPLAINT, DENYING ALL**

13 APPLE INC., CISCO INC., EBAY INC.,   **PENDING MOTIONS FOR**
PAYPAL INC., GOOGLE INC.,   **SUMMARY JUDGMENT, AND**

14 JUNIPER NETWORKS, MICROSOFT CORP.,   **VACATING HEARINGS**
NETFLIX INC., ORACLE INC., MARK HASTINGS,

15 ERIK VAN DER KAAY, AND THALES GROUP,
and "UNSERVED" DOES,

16   Defendants.

17   /

18   Two *pro se* plaintiffs seek to obtain millions of dollars in damages for the "largest fraud

19 loss in history" based on allegations they say "sounded Looney originally." Nevertheless, they

20 have sued more than twenty defendants, including the United States. Plaintiffs claim to own the

21 intellectual property rights to "a part of virtually all networking systems in use globally" and that

22 their rights "control most online commerce in the US today."

23   A week after filing their second amended complaint, plaintiffs filed six "dispositive"

24 motions, including a motion to take a multi-trillion dollar loss on their 2014 taxes and a motion to

25 assign themselves patent rights they admit they do not own.

26   Having reviewed the more than 1,000 pages larded in the record by plaintiffs, this order

27 rules as follows. For the reasons stated herein, all claims are **DISMISSED WITH PREJUDICE**.

28 The motions to dismiss are **GRANTED**. All of plaintiffs' motions are **DENIED**.

                *   *   *

Pro se plaintiffs are Todd Glassey and Michael McNeil.[*] Defendants include the United States, the "State of California," individuals, and many technology companies — including, Apple Inc., Cisco Inc., eBay Inc., Google Inc., Juniper Networks Inc., Microsemi Inc., Microsoft Corp., Netflix Inc., Oracle Corp., PayPal Inc., and more. The United States has appeared and at least seven law firms were retained for this matter.

In essence, to the extent comprehensible, the eighty-page second amended complaint alleged that plaintiffs assigned their intellectual property rights to an entity called Datum Inc. in 1999 via two settlement agreements. Defendant Microsemi Corp. is now the assignee of the patents referenced in the second amended complaint.

After the settlement agreements were signed — approximately seven years later — plaintiffs commenced a lawsuit in Santa Cruz Superior Court, alleging malpractice, breach of contract, and other claims arising from the settlement agreements. Plaintiffs then voluntarily dismissed the lawsuit. *McNeil, et al. v. Symmetricom, Inc.*, No. CV-165643 (Santa Cruz Sup. Ct.).

Plaintiffs subsequently commenced a new lawsuit in federal court. *Glassey, et al. v. Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (Judge Nat Cousins). That action was voluntarily dismissed as well, after an order to show cause regarding subject-matter jurisdiction was issued.

Pro se plaintiffs later commenced this action. Their motion for a "three-judge panel" was denied. Six defendants then moved to dismiss and in an October 2014 order, the first amended complaint was stricken. Plaintiffs were given one more chance to plead their best and most plausible case. They were warned that failure to cure the identified deficiencies could result in dismissal with prejudice (Dkt. No. 109). The initial case management conference was vacated.

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[*] 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 Nat Cousins).

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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

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1   "printouts" from patent offices in Europe, South Africa, Japan, Brazil, Korea, Canada, and

2   Australia. Plaintiffs' requests for judicial notice, which were not properly authenticated, are

3   **DENIED**.

4   The United States responds that plaintiffs' motion should be denied because (1) there is no

5   jurisdiction; (2) there is no evidence the United States waived its sovereign immunity; (3)

6   plaintiffs' motion was procedurally improper because it was filed before any defendant answered

7   the complaint; and (4) the bare motion lacked any sworn and authenticated support.

8   *None of the relief demanded by plaintiffs is granted.* This Court lacks jurisdiction over the

9   "tax" matter plaintiffs brought. Since the United States Attorney is already aware of this motion,

10   it will not be referred to their office. The United States Attorney may forward a copy of

11   plaintiffs' filings and this order to the Internal Revenue Service and any other agencies as

12   appropriate. Plaintiffs' motion to take a "fraud loss" on their 2014 taxes is **DENIED**.

13   **4.   MOTION TO VOID THE DDI AND TTI SETTLEMENTS.**

14   Plaintiffs state that docket number 123 "replaces" docket number 118. Nevertheless, both

15   briefs have been read.

16   Plaintiffs move to award themselves "full custody" of two United States patents by

17   moving to "void" the settlement agreements they signed more than fifteen years ago. In short

18   (based on the unauthenticated settlement agreements filed by plaintiffs), in the "DDI settlement,"

19   in exchange for $300,000, plaintiffs agreed to assign all rights, title, and interest in the

20   "Controlling Access Patent" and patent application to Datum, Inc. Plaintiffs also granted Datum

21   a non-exclusive, irrevocable worldwide license to the "Phase II Technology and derivative

22   thereof" with rights to sublicense (Dkt. No. 121-3). In the "TTI settlement," in exchange for

23   royalties for the years 2000 through 2002, plaintiffs agreed to disclaim any ownership in or rights

24   to the "Protected Technology," a term defined at length in the settlement agreement (Dkt. No.

25   121-2).

26   To "void" these two settlement agreements, plaintiffs reference two decisions: *Gellman v.*

27   *Telular Corp.*, 449 F. App'x 941, 945 (Fed. Cir. 2011) and *Talbot v. Quaker-State Oil Ref. Co.*,

28   104 F.2d 967, 969 (3d Cir. 1939). Plaintiffs' reliance on *Gellman* and *Talbot* is misplaced.

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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,"

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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

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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.
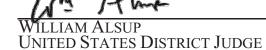
21   Having considered plaintiffs' second amended complaint, plaintiffs' oppositions to the

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**.

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.**

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10 Dated: December 29, 2014.

                                             WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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6   IN THE UNITED STATES DISTRICT COURT

7   FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10   TODD S. GLASSEY and MICHAEL E. MCNEIL,

           Plaintiffs,

11   No. C 14-03629 WHA

           v.

12
     MICROSEMI INC, US GOVERNMENT,
13   PRESIDENT OF THE UNITED STATES,   **JUDGMENT**
     STATE OF CALIFORNIA, GOVERNOR BROWN,
14   THE IETF AND THE INTERNET SOCIETY,
     APPLE INC., CISCO INC., EBAY INC.,
15   PAYPAL INC., GOOGLE INC.,
     JUNIPER NETWORKS, MICROSOFT CORP.,
16   NETFLIX INC., ORACLE INC., MARK HASTINGS,
     ERIK VAN DER KAAY, AND THALES GROUP,
17   and "UNSERVED" DOES,

18   Defendants.

19   /

20   For the reasons stated in the accompanying order granting motions to dismiss and

21   striking second amended complaint, **FINAL JUDGMENT IS HEREBY ENTERED** in favor of

22   defendants and against plaintiffs. The Clerk **SHALL CLOSE THE FILE**.

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24   **IT IS SO ORDERED.**

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26   Dated: December 29, 2014.

27   WILLIAM ALSUP
                                                        UNITED STATES DISTRICT JUDGE

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Location Based Control System
GeoSpatial and Temporal Keying System's POLICY LANGUAGE

This description is a high-level mapping of time and location controls into a uniform software interface for use in GeoSpatial Location and Temporal Based Control systems.

Bolt-on Policy Controls: These services allow for the implementation of a set of policy controls which constrain access to information at the file level or systemic level by location and time of access pertaining to events or times in the real world and those in a virtual world modeling events in the real world. The controls are part of the GeoSpatial Additions to the eSign Toolkit and provide for its novel functionality in addressing both a transaction authorization and recording process based on these controls and the policies which can be implemented from them.

Location means: Location-centric (i.e. pertaining to location – real or virtual) can be predefined for use in controlling access to information whether at the systemic, network, or file system access-control level, and while this is not all of the possible logical controls and combinations it represents a sampling of the more popular ones.

Temporal Policies: The Temporal Policies (i.e. pertaining to a discrete time, an interval of time, or a limit in time, or the time of the occurrence of an abstract event-state) allow for files or data connections or other events to take place based on a set of time-based abstractions. These include keywords to qualify the temporal policies including (At, Till, When, etc.)

Action The **Action** is the part of the geospatial or temporal policy service that defines what happens, generally the Action is to ALLOW or DISALLOW access or some other policy controllable state per the additional string of arguments.

Locus The Location of a policy event or Action. The Locus can be a PhysLo, VirLo, JudLo, or free-form location or state token

The intent is to allow the creation of a modular set of rules and controls for implanting policy at the object or entity level.

Action(Argument1, Argument2, …, Argument X)

Basic policy is to have a defined action constrained by a set of Arguments and Term Tags. Policy can be negated for inverse effect modeling as well for any rule set. Basic Policy is based on two "Actions", those being ALLOW and DISALLOW. The Arguments to Action and the associated tags would be defined on a per use basis.

Allow(At, In, Once, Never) **Allows access to the controlled object at some specific time and in some particular physical location only.** *Has two predefined special forms or*

Location Based Control System
GeoSpatial and Temporal Keying System's POLICY LANGUAGE

	states ONCE and NEVER . Once is a permission to have some specific policy control enable a one time access, and Never is a negated form with an alarm handler built-in. This allows individual objects to alarm when improperly accessed or access time's and locations are invalid. Other states can be supported as well.
Once (State, Event, Control**)**	Execute or allow Once the specified Event Code and Control ID**.** CREATES EVENT STATE
State, Event, Control	Globally defined variables in the installation of the policy controls on any given system. Allows for customization of event types.
Alarm(Steps)	Follow STEPS in ALARM States
Steps(Email, Page, Shutdown)	Steps for Alarm Functions include emailing and triggering pager systems, and in the automated closures or shutdowns with state-freeze for transaction systems.
Never (Once, Alarm**)**	Negate performing the Event Specified in establish an ALARM process for it should it occur. Creates EVENT STATE.
At(Time or Event, State**)**	Allows specification of a real or virtual timing instance or interval or time. May be used in the positive or negative to create enablement or suppression & prevention controls.
In(Location or Event, State**)**	Supports PhysLo, VirLo, and JudLo tokens as well as statement locations or GPS Data Stream or other position indicating process including user-declared. ***Virtual Locations may be as simple as declaratory or based on the calculation of IP Address or MAC Address deployment.***

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Around(In, +/- Delta)	A method of setting a relative or virtual distance from the location code for the policy control which accepts location data from streaming GPS or other position indicating systems like DNS for network address resolution. This allows for a policy control language wherein "IN AND AROUND (www.domainname.com)" would be a legal policy control statement in the same way IN AND AROUND "LAT" + "LONG" within STD could mean the taking of location data as a physical location by statement or from some device which indicates the location like Inertial Guidance or GPS Systems. ***Virtual Locations may be as simple as declaratory or based on the calculation of IP Address or MAC Address deployment.***

Policy Grant and its term
Terms of a unqualified grant of a policy like Allow(Once)for instance, lasts for the period of the current session, and then when that is terminated, any unused Allow(Once) tokens or entitlement's held by the process, expire and are of no value or use. At such time as another access at a later session is undertaken, then said rights have to be re-granted by manually setting them up as part of a users profile. This precludes the unintentional use of the 'power of a legal instrument' as a 'computer error'.

The policy modules are implemented on software based cryptography which also can support input or modularization by the use of hardware (HW) cryptographic co-processors.

Policy/Controls: Allow(At,Till,Always,)
The following are control services and software (sw) modules which implement these controls and services. All policy controls are based on a session-long entitlement and all limiting or delimiting controls are based on this architecture. Files controlled with these modules meet the access rules set in the statement model (covered under Claim 22 US Patent 6370629 rights).

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Allow(At) provides a policy control for allowing a digital object to be decoded or operated upon or accessed at a specific time. **Allow(When)** also works in the same manner.

Likewise the **Allow(Till)** control provides access during the current session until the "Till Condition" is satisfied. AllowTill supports asynchronous and synchronous Events to meet all types of core policy and control uses.

AllowTill then is essentially an open access right or entitlement to some digital object until some point in time or other predefined Digital Event occurs. It provides a method that allows a digital document's cryptographic locks and acknowledgment tools to be opened until the time expires or event specified starts or starts and completes.

Allow(Always) is just what it appears to be but must be reset within each operating session. AllowAlways is essentially an open access right or entitlement to some digital object or that allows a digital document's cryptographic locks and acknowledgment tools to be opened always.

Allow(in) [or around]
Used as both a primary policy and secondary policy component qualifier, A secondary argument for Allow(In) provides location or event specific controls as well, for instance, one could use Allow(In=Location) where Location = PhysLo, VirLo, JudLo, or Pre-Defined Global Event.

The In Tag also has a negated form as well (NotIn) to create policy controls for locking functionality in or out while in or not in some specific or virtual state or place.

<u>Allow(Once)</u>
Allow opening of file or object one time only. Allow(Once) is a control that is added to basic processes to allow for their execution one time as part of any workflow. This allows for clean startups and configurations to be done with cryptographic controls of their policy and logging data.

Allow(Once) can be used within a session to allow any object or file to be opened at any time, one time.

Terms of a unqualified grant of Allow(Once) lasts for the period of the current session, and when that is terminated, any unused Allow(Once) tokens held by the process, expire and are of no value or use.

Allow(At+Once) and Allow(Till+Once)
Allow opening of file or object one time only at designated time. If client doesn't request this at the specific time (+/- some delta) then the opportunity is lost.

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Allow(At+Once) allows for the defined event to occur or file to be opened or written to. This event can happen as soon as the client requests the write to the policy-controlled file, but only one time.

Disallow Function
Each of the above Allow Functions has a negative form as well called Disallow which executes a denial of access until some specific time or the data is loaded into a particular place as in embargoing trading or equal access processes in network based trading systems and the like.

Disallow(At)
The Disallow(At) function allows a policy model of terminating an access model at a specific time or virtual time instance. The "at" to be disallowed at the occurrence of can also be a defined interval or repeating instance.

Disallow(Till)
The DisallowTill function allows a policy model of embargoing access to something data object or its content until some time or event occurs in the real or virtual worlds. At the time of the event's occurrence the policy requirement for the current session will be met and the 'embargoed event' can occur then.

The "till" to be disallowed until the occurrence of can also be a defined interval or repeating instance

Disallow(In)
The Disallow(In) function allows a policy model for embargoing access to something data object or its content when located in some physical or logical location or when 'in some predefined state' as well.

Other policy controls like Allow(Otherwise) can be implemented as well, and are intended but not shown here.