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

Todd S. Glassey In Pro Se, and

Michael E. McNeil In Pro Se,

Appellants,

vs.

Microsemi Inc, et Al,;

Appellees

Case No.: 15-cv-1326

**NOTICE OF MOTION AND MOTION TO
REMOVE NINTH CIRCUIT APPEAL 14-17574 IN
FAVOR OF OR TO CONSOLIFATE WITH THIS
LITIGATION IN THE DC CIRCUIT**

**NOTICE OF MOTION AND MOTION TO REMOVE NINTH
CIRCUIT APPEAL 14-17574 IN FAVOR OF OR TO
CONSOLIDATE WITH THIS LITIGATION IN THE DC CIRCUIT**

1. May it please the Court, Appellant/Plaintiffs Glassey and McNeil do submit this Notice of Motion and Motion to Remove and Consolidate the Ninth Circuit Appeal #14-17574, an Appeal from US District Court Case 14-CV-03629-WHA from the San Francisco Division of the Ninth Circuits District Court operations which was improperly directed to the Ninth

1 Circuit by a Form Error in the Clerk of the Courts Operations, preventing Pro Se Litigants
2 from properly being able to appeal to the DC Circuit.

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5 NOTICE OF MOTION AND MOTION TO REMOVE NINTH CIRCUIT APPEAL 14-754 IN FAVOR OF OR TO
6 CONSOLIDATE WITH THIS LITIGATION IN THE DC CIRCUIT 1
7 FRAP, Circuit Responsibilities and DC Circuit Standing provides all Patent Related Matters are Properly
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1 ***FRAP, Circuit Responsibilities and DC Circuit Standing provides all***
2 ***Patent Related Matters are Properly Appealed to the DC Circuit***

- 3
- 4 2. Patent Related matters including those pertaining to patents illegally filed in other countries
5 properly appeal to the DC Circuit under 28 U.S.C. § 1294 and 1295;
- 6 3. This matter contains claims against the filings of US6370629 and US63903126 in multiple
7 nations. Because of how Plaintiffs claim, under both Title 17 and Title 35, and 28 USC 1338
8 is filed, our matter is specific to a number of alleged frauds specific to patents and their
9 filing.

10 **The 14-CV-03629 Claims**

- 11 4. Those claims pertaining to the various (improper filing, obtaining of a settlement agreement
12 through duress for that single US Patent US6370629, as well as the additional fraud claims in
13 the withholding of the settlement agreement) for the US Filing; and
- 14 5. A separate and free-standing fraud claim in the unlawful filing of numerous foreign nations
15 under the US6370629 umbrella;
- 16 6. Additionally there is a fraud claim in unauthorized filing claim pertaining to the filing
17 US6393126 "claiming Inventorship of property clearly constrained in the TTI Settlement", as
18 such, and independent ground from the US6370629 claims in this matter which properly
19 should have appealed directly to the DC Circuit.

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22 **DC Circuit - Erickson v DLink et Al**

- 23 7. For these reasons, it is very appropriate to remove and stop any other actions pertaining to
24 errors in filing based on Clerk-Provided Forms, and remove the Ninth Circuit Appeal to the
25 DC Circuit; This case will wind up being another Erickson v DLink instance on both an

1 underlying Incremental Value which is added by Plaintiff's PHASE-II Technologies, which
2 with the DC Circuits recent experience also makes the Circuit ripe for prosecuting this matter
3 exclusively.

4 **PRO Se Litigants use what Forms the Courts provide them**
5 **with9**

6 8. Unfortunately, Appellants are Pro Se litigants and used the Pro Se Document Package which
7 only supports filing to the Ninth Circuit.
8

9 ***This matter is a patent and related IP fraud matter, and properly***
10 ***should appeal to the DC Circuit***

11 9. This underlying matter from the USDC (CAND 14-CV-03629-WHA) filed in a district court
12 in the Ninth Circuit is a matter with multiple counts, Patent related and Fiduciary Frauds are
13 alleged. Several of the claims pertained to 28 USC 1338 and its related controls.

14 10. Other claims pertain to 28 USC 1294 and 1295, and others for breach of contract, and finally
15 from the subsidiary infringers, their conversion of Intellectual Property through republication
16 under Title 17 of protected methods inside controlled Softwares; This Complaint was
17 wrapped up with a final claim of Government Interference from the US Department of
18 Commerce, Department of Justice, Office of the President and several other agencies all of
19 which trigger the Takings Clause violations as alleged.

20
21 11. Because of these specific claims and the scope of the complaint based "in part" on 28 USC
22 1338, and (with certain possible exceptions) any appeal must consequently be directed to the
23 Federal Circuit.

24 *In American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 220 USPQ 763
25 (Fed. Cir. 1984) (Rich, C.J.), *cert. den.*, ____ U.S. ____, 224 USPQ 520 (1984), which
was an appeal from a district court in the Ninth Circuit, a panel of the Federal Circuit

1 gave careful consideration to opinions from the Ninth Circuit concerning an antitrust
2 issue as to which there was a split among the circuits. However, the panel did not indicate
3 that it was bound by the Ninth Circuit's view. In fact, it chose to follow contrary
4 precedent from other circuits, and it reversed the district court with the comment that the
5 losing party below (which had not argued to the district court that it should follow the
6 contrary precedent rather than the Ninth Circuit's precedent) "may have been misled by
7 the Ninth Circuit precedent." In its unsuccessful petition for *certiorari*, Sowa and Sons,
8 Inc. argued vigorously that the Federal Circuit had erred in failing to follow the Ninth
9 Circuit's precedent.

10 In *In re International Medical Prosthetics Research Associates, Inc.*, 739 F.2d 618,
11 USPQ (Fed. Cir. 1984) (Markey, Ch. J.), a different panel of the Federal Circuit held
12 (without citation of authority and without discussion of *American Hoist*) that, in cases
13 that are appealable to the Federal Circuit and that involve issues concerning "purely
14 procedural matters" (in that case, disqualification of counsel), the district court should
15 and the Federal Circuit would apply "the . . . guidance previously made available by the
16 circuit . . . having authority over the district court under 28 U.S.C. § 1294." Since *In re*
17 *International Medical*, the Federal Circuit has held that the "guidance" of the otherwise
18 applicable regional circuit court should be followed on the following procedural issues:

- 19 (1) whether or not the district court had abused its discretion in dismissing a count
20 alleging unfair competition based on state law in a multi-count complaint that also
21 alleged patent infringement, the alleged unfair competition consisting of the
22 misappropriation of trade secrets later embodied in the patent;
- 23 (2) whether or not the district court had abused its discretion by denying a
24 preliminary injunction on a trade secret count in a multi-count complaint that also
25 alleged patent infringement; and
- (3) whether or not the district court had abused its discretion by denying a stay
pending arbitration of the scope of the claims in a licensed patent in a suit to
recover royalties under the license.

12. We continue with *Al Bolser's Tire Stores* and *Atari Inc* - two key cases for referral to the DC
Circuit from Ninth Circuit District Courts.

In *Al Bolser's Tire Stores, Inc. v. Bandag, Inc.*, 750 F.2d 903, 223 USPQ 982 (Fed.
Cir. 1984) (Bennett, C. J.), and *Atari, Inc. v. JS&A Group, Inc.*, 747 F.2d 1422, 223
USPQ 1074 (Fed. Cir. 1984) (in banc) (Markey, Ch. J.), the court extended *In re*
International Medical and *Panduit* to non-patent substantive as well as procedural
law, thereby apparently overruling this aspect of *American Hoist* sub silentio. In *Al*
Bolser's the court stated that, "[i]n the trademark portion of this case[,] we will be
guided by the relevant law in the Ninth Circuit, to the extent it can be discerned, and
not require the district court here to follow conflicting rules, if any, arrived at in the
other circuits," and in *Atari* the court ruled that it would treat Seventh Circuit law on
certain copyright issues as controlling.

1 According to the opinion by Chief Judge Markey for a majority of the in banc court in
the *Atari* case:

2 The freedom of the district courts to follow the guidance of their particular circuits in
3 all but the substantive law fields assigned exclusively to this court is recognized in
the foregoing opinions and in this case.

4 Since *Al Bolser's* and *Atari*, the court has also held that the "guidance" of the
5 otherwise applicable regional circuit court should be followed as to Federal
6 preemption of state-law intellectual property protection and in determining the
validity and enforceability of an agreement settling a patent infringement dispute

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9 ***Amending Notice of Appeal under FRAP didn't stop the Ninth Circuit***
10 ***Matter***

11 13. Plaintiffs properly amended notice of this appeal. The appeal is properly filed and must
12 remain in the DC Circuit actively; In fact the DC Circuit has direct jurisdiction in these
13 matters and Superiority over all other Circuits in this type of case.

14 14. This DC Circuit Appeal as such pertains to a blanket refusal of the US DC CAND to hear the
15 specific claims in a case pertaining to a set of US and foreign Patent Applications and the
16 Settlements which finally established rights for both parties in this matter.

17 15. It (the case) is properly pertaining to the definition of PHASE-II Technology Components of
18 US6370629, and its filings in seven other nations as well as the original sale of the Patent in
19 violation of the Non-Assignment Clause in the underlying contract and the US Government's
20 active refusal to prosecute a Sherman or Clayton Act violation or EEA violation there as
21 well.

22 16. The USDC Cause and Claims also pertained to the requested and denied Court review to
23 produce a determination of "whether under that umbrella the US6370629 patent was
24 expanded by Microsemi in violation of the agreement to include all of the PHASE-II IP's
25

1 possible and in doing so prevented any other PHASE-II standards level patents from being
2 filed".

3
4 17. Finally, in regard to the original filings, US6370629, Plaintiffs alleged frauds about the
5 content of those foreign filings, and the unauthorized abandonment to make the IP essentially
6 unprotectable by anyone there, to functionally "give it away to everyone in those nations".

7 **Underlying Litigation was based on determining the Settlement Sufficiency and**
8 **those damages caused by its Withholding for 12 years**

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10 18. As another key claim in the complaint Plaintiffs challenged the sufficiency of the Settlement
11 contract for the patent assignment and its functionality based on a number of factors and its
12 content'; A matter pertaining to the Gellman and Talbot Rulings from the DC Circuit and the
13 US Supreme Court, this matter is properly Appealed to the US DC Circuit.

14
15 19. It also pertains to qualifying tax losses against unfiled returns a secondary claim which ties
16 the matter again exclusively to the DC Circuit;

17 **Procedural Flow**

18 20. The following paragraphs address the procedural flow of the filing of this appeal and the lack of effect a
19 properly filed amended notice of appeal had on redirecting the Appeal to the DC Circuit therein.
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1 ***CAND Clerks office failing to provide proper access to the correct***
2 ***filing forms caused the misfiling of this in the Ninth Circuit. This***
3 ***matter was improperly filed and moved for correction***

4 21. In filing the original appeal, Plaintiff/Appellants used the only forms available from the
5 Clerks office. Those are part of the "CivLit Packets" the office of the Clerk officially
6 provides to Pro Se Litigants, and those at that time only supported filing in the Ninth Circuit.

7 22. As noted elsewhere in this response, this matter should have originally been appealed to the
8 DC Circuit per the terms of the filing in 15-1326.

9
10 ***Plaintiffs moved the court to address this procedural flaw and they***
11 ***refused.***

12
13 23. To Correct the filing error, Plaintiffs notified the Clerks Office inside the Northern District
14 through ECF, and because of no action on the US DC's Clerks Office to correct the Error,
15 formally moved the Ninth Circuit through motion in their case number 14-77574 to stop and
16 terminate the Ninth Circuit Appeal because of the failings of the forms available in the
17 Clerks Website;

18 24. The same forms which only allow Pro Se litigants to appeal to the Ninth Circuit. An action
19 by the Clerk at the Northern District clearly denying Pro Se Litigants the opportunity to
20 Appeal to the DC Circuit in violation of the Procedural Standards and Statutes today.

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22 ***Amended Notice of Appeal on 1/7/2015***

23 25. Still within the proper time frame we correct the NOTICE OF APPEAL pointing the Appeal
24 at the Ninth Circuit Court with an AMENDED NOTICE OF APPEAL within the Northern
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1 District of California Clerks office (in See CAND SF 14-CV-03629-WHA Docket #191 and
2 #192 and their attachments) ,

3 26. The filing of the Amended Notice of Appeal with the DC Circuit Court Name on it should
4 also have terminated the previously filed Notice of Appeal per Northern District rules and
5 sent the California Ninth Circuit Appeal immediately to the DC Circuit Appellate in the
6 matter herein.

7 **Conclusion**

8 27. We therefore ask the Court to Remove and Consolidate Ninth Circuit Appeal #14-17574 with
9 this the properly filed Appeal to the DC Circuit.
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11 Dated this 5th day of March, 2015

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