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5 **IN THE UNITED STATES COURT OF APPEALS**
6 **FOR THE NINTH CIRCUIT**
7 **SAN FRANCISCO**
8 **(CIVIL DIVISION)**
9

10
11 TODD S. GLASSEY and MICHAEL E MCNEIL,
12 Appellants,

13 vs.

14 MICROSEMI INC, et Al,
15 Appellees

16 Appeal No.: 14-17574
17 Appealed from
District Court Case 14-03629-WHA
18 from San Francisco District Court

19 ***APPELLANTS REPLY BRIEF TO***
20 ***APPELLEE'S RESPONSE BRIEF***
21
22
23
24
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19 **Standards of Review - FRAP 28(a)(9)(B)**

- 20 1. The 14-17574 case is a Unique petition to the Ninth
- 21 Circuits Appellate Court because most cases only have one
- 22 Standard Of Review for submission to the Appellate Court,
- 23 and this case has three separate ones.
- 24 2. Those being DE NOVO review, ABUSE OF DISCRETION, & CLEARLY
- 25 ERRONEOUS rulings from the District Court.

1 **Plaintiffs' Opening Brief Directly Identified the Basis for** 2 **Challenging the District Court's Order Striking the Second** 3 **Amended Complaint and the District Court's Judgment**

- 4 1. The Brief identified that Plaintiffs had asked for a Hearing to review
5 the Rescission the unilaterally enforced under California Appellate
6 Standard in Nelson and two other precedents against Microsemi, and
7 which Appellant/Plaintiffs directly their original standing under the
8 Co-Inventor Agreement.
- 9 2. Because of the time-passage, the Co-Inventor Agreement's "Direct
10 Enforcement" Clause took effect and so Appellant/Plaintiffs perfected
11 their independent standing under the umbrella of the Co-Inventor
12 Agreement. Appellants/Plaintiffs asked the court to review that
13 standing and the Court did not; As such the Court dismissed without
14 reviewing the effect of having properly served Datum in 2004 that
15 Unilateral Rescission in advance of their performance in the TRANSFER
16 and ONGOING COMPONENTS of the Settlement agreement were performed. And
17 that under California Standards Appellant/Plaintiffs had damage claims
18 against the illegally filed and then abandoned instances of US6370629
19 including the Japanese abandonment which happened three calendar years
20 later as part of Datum Corp's actions to destroy the protectability of
21 the PHASE-II IP inside US6370629 globally.
- 22 3. Appellant/Plaintiffs also in that review of the formal standings asked
23 for a Fraud and Performance with regard to ongoing issues with the
24 alleged Settlement since most of those also void the Settlement as well
25 under California Contract Precedent.

1 4. Since any of these matters returns full control of US6370629 to the
2 Appellant/Plaintiffs in fact Appellant/Plaintiffs properly demonstrated
3 their standing.

4 5. Additionally they asked for review of independent Copyright Protections
5 both derived through IETF publications of the IP in question, and
6 through the creation of computer program using that IP from the other
7 Defendants.

8 6. As such both Standing under the Patent and Copyright Enforcements was
9 demonstrated as reasonable and Appellant/Plaintiffs in their Pro Se
10 Style asked for just that review.

11
12 ***Appellant/Plaintiffs Brief Identified several Causes which give the***
13 ***District Court Authority***

14 7. The International Fraud Complaint is just one area where only the US
15 District Court would have proper standing to enforce under
16 International Antitrust and US Antitrust Acts.

17 8. International transfer and then return of the TRUSTED TIMING SETTLEMENT
18 Materials is also something only a Federal Court would have
19 jurisdiction in, and certainly the Unauthorized filing of US6393126 by
20 Microsemi with no release is additionally a Federal Matter and as such
21 the District Court does have proper Standing to hear these matters.

1 **District Courts regularly apply State Law to matters meaning that the**
2 **California Standards for Contract Review and Fraud Precedents are**
3 **proper as the key Points of Authority pertaining to recession,**
4 **damage, and key claims**

5 9. US District Courts regularly apply Choice of Law standing in Contracts
6 at the State level which are being reviewed in Federal Court for
7 Federal matters pertaining to the execution or standing of the Contract
8 both in the US and Internationally, as such the Appellant/Plaintiffs
9 likewise have standing their to ask for review of those matters before
10 the District Court.

11 **Appellants asked the District Court for Specific Review which the**
12 **District Court stayed and then dismissed whole cloth**

13 10. Appellant Plaintiffs asked for specific areas of
14 review for a set of contracts, a) in particular to the
15 ordering of the Statements in the Settlement and the
16 particular use of the TALBOT PHRASE "Sole Owners" in the
17 Settlement to convey joint patent enforcement rights
18 therein; b) the method of how those contracts were
19 obtained; and c) in that we asked for a review of the
20 actions which constitute performance or failure to perform
21 on those contracts.

22 11. Fundamentally, by using a process of limiting the
23 scope of how the Questions were addressed, the Court itself
24 constrained the Litigation by denying without allowing for
25 review any part of the matter;

Issues Presented on Appeal from the District Court

12. The key claim is that unilateral rescission took place in 2004 and Microsemi continued to represent it and it alone controlled US6370629. Appellants sought the review of this, and that was denied without any consideration of the standing or the effect of the unilateral rescission notice on Microsemi.

13. In doing so the Court abused its discretion to "recast the complaint itself". Other claims the Court sidestepped completely including JUDICIAL NOTICE OF ILLEGALLY FILED instances of US6370629 in Brazil, Japan, South Korea, South Africa, Australia, Canada and the EU as well as the failures under the Settlement's ONGOING PERFORMANCE clauses in sections 8.3 and 8.4 of the Settlement Agreements.

14. To address this, Appellant/Plaintiffs asked the District Court to rule on the following questions in the original complaint, and in the Motion to Review the Settlements themselves.

• **Is/Are the Settlement Agreement(s) a product of a Sherman Act violation?**

- o Did Mark Hastings file the original US6370629 Patent Application by removing the Co-Inventor Agreement from the Assignment Statement and Release Package to be submitted to USPTO and registering it in his name only? ***This is capable of being reviewed in camera by simply reviewing the US6370629 file wrapper as submitted to the Court.***
- o Did Mark Hasting transfer the application for the 629 Patent to DATUM by selling his company DDI to them?

*This can be reviewed by the SEC EDGAR filings for
DATUM INC for June/July 1999*

- Was DATUM Corporation aware of the US6370629 patent?
- Had DATUM shown it to their partners at TRIMBLE Navigation?
- **Was that same alleged Sherman Act Violation also an action which would violate the Clayton Act if it was used to extort the Settlement from Appellant/Plaintiffs?**
 - Did the illegal transfer of the Patent to Datum and their subsequent filing of a lawsuit to force Appellant/Plaintiffs to assign rights never intended to Datum Corp constitute a Clayton Act violation?
 - Did DATUM withhold financial payments owed to create an Economic Hardship for Appellant/Plaintiffs to force their agreeing to the Settlements?
 - Was a combo of Economic Extortion and a Lawsuit speciously filed used as weapons to force Appellant/Plaintiffs to turn over IP they are the SOLE OWNERS of to DATUM?
 - What has DATUM done with that IP since that time - has it ever been enforced and what opportunities for that enforcement have been lost?
- **What is the effect on the ability to file natural PHASE-II Master Patents in any of the nations where US6370629 instances were filed and then abandoned?**
 - The SETTLEMENT CLAIMS Appellant/Plaintiffs are the SOLE OWNERS OF PHASE-II IP. What damage did that cause in LOSS OF ENFORCEMENT RIGHTS against the IP in question for Appellant/Plaintiffs?
 - Why are there no releases for US6370629 filed in the EU, JP, BR, CA, KO, and AU?
 - What is possible with filing Master Patents for creating a set of algorithmic patents against PHASE-II IP because of the abandonment of those illegally filed instances of US6370629?
- **What was the effect of the Appellee/Defendant Microsemi representing to the world that "it had not signed the contract and Appellee/Plaintiffs held no rights to any phase-II IP's" to all until 2013/feb-26th when they turned over the executed copy of the disputed contract for the first time?**

CAUSE: in re De Novo Review

15. In this matter Appellate Plaintiffs are entitled to review under "De Novo" standard of review.

1 Appellant/Plaintiffs applied for a Three Judge Panel under
2 section 2284 because PHASE-II IP directly affects the
3 Nations ability to electronically capture and process
4 voting records such that it controls mechanical
5 apportionment per its mandatory SW Licensing Requirements.

6 16. Additionally in this matter since it pertains to the
7 TIMESTAMPING Intellectual Properties inside of NETWORK
8 APPLIANCES (servers, routers, switches) and the Client-side
9 Code used in implementing what is called LOCATION BASED
10 SERVICES in networking the scope of loss here is
11 potentially very significant.

12 17. We further asked for Review of our POST SIGING
13 ENFORCEMENT CLAIMS for both Patent and Copyright Protected
14 extensions of the US6370629 protected IP and the Court
15 refused saying there were functionally none although the
16 Settlement calls the APPELLANT/PLAINTIFFS the SOLE OWNERS
17 of the Disputed PHASE-II IP's.

18 18. Finally we asked the Court to review the Rescission we
19 demanded and noticed the other side for rescission prior to
20 performance of the key claims therein; and the underlying
21 California Contracts Standards pertaining to Damages from
22 Partially or improperly performed contracts and their
23 rescission under California precedent.
24
25

1 19. All of these are grounds for said De Novo rehearing
2 before the Appellate Court for this matter.

3 **LEGISLATIVE and JUDICIAL BRANCHES are also infringers but have**
4 **no "we do not have to prosecute" options**

5 20. Because both the Courts and Congress have and do use
6 these same intellectual properties in their systems this
7 matter creates a problem the Courts simply cannot make go
8 away by saying **they wont review the damage or fraud claims**
9 **or history.**

10 21. **Neither the US House or Judiciary have a STAND DOWN**
11 **OPTION in their Mandatory Prosecution Requirements in a**
12 **situation where "the Actions of the Executive Branch cause**
13 **another Branch to break a law or treaty officially".**

14 **Matters of Congressional and Constitutional Law**

15 22. We formally asked the Court as well if the US Attorney
16 General can in fact refuse a prosecution request which
17 causes another branch of Government (the Courts or the
18 Legislative Branches) to violate an Intellectual Property
19 enforcement action - i.e. can the Administrations Actions
20 make a Civil IP Infringer out of the other two branches of
21 Government?
22

1 **Matters pertaining to Fraud Losses the Court refused to review - not rule**
2 **didnt happen - just refuses to review**

3 23. We also documented in the Complaint two other key
4 areas of Constitutional Law that cause infringements on the
5 controlled IP within the mechanisms the US Government is
6 using to operate today and requested the Court formally
7 acknowledge that loss - it refused.

8 24. A judicial abuse of discretion occurs when the trial
9 judge acts in an arbitrary or unreasonable way that results
10 in unfairly denying a person an important right or causes
11 an unjust result.

12 **US DC interference with the filing of a legitimate IRC165 Fraud Loss**
13 **constitutes a breach of standing**

14 25. The blocking of the Review of the Fraud Losses over
15 the original matter causes a US Tax Filing Problem as a
16 manifest creation of the Court to prevent said filing.

17 26. That constitutes a direct interference by the very
18 Court itself with the filing of US Tax Paperwork and as
19 such is a direct abuse of discretion.

20 27. Since the Court dismissed that motion without hearing
21 no such review of the underlying fraud took place and as
22 such the Court itself is interfering with the proper filing
23 of US Tax Paperwork.
24
25

Matters pertaining to the Review of Abuse of Discretion Claims

1 28. Finally under Abuse of Discretion claims, we asked for
2 Appellate review of the Court's "blanket refusal to review
3 the METHOD through which the disputed contract was
4 obtained" or the Historical Records of the
5 Appellee/Defendant's actions in "meeting the terms of the
6 Settlement Agreement" they have with Appellant/Plaintiffs.
7

8 29. The District Courts blanket staying of all motions and
9 dismissing them without hearing as well as the final
10 dismissal with prejudice is an "Abuse of Discretion"; and
11 that these three actions created cause for review in the
12 Appellate per FRAP;
13

CAUSE: Clearly Erroneous Ruling from the District Court

14 30. The District Courts dismissal with prejudice is
15 clearly erroneous because it excuses any future performance
16 on a contract which goes on indefinitely. It does so
17 without compensation.
18

19 31. Additionally the DISMISSAL blocks any review the
20 INVENTORSHIP Standing when the US6393126 TTI Settlement
21 clearly says that GLASSEY and MCNEIL invented the TTI and
22 licensed the use of the Term TTI itself to MICROSEM; this
23 simply means that GLASSEY and MCNEIL are the Trusted Timing
24 Infrastructure Technology (called the TTI) inventors and
25 the patent must be corrected.

1 ***DISTRICT COURTS incorrect statement that the Settlement ended any***
2 ***Joint Standing is an erroneous error of Law. The current standing of***
3 ***that agreement is what has to be determined***

32. Appellant/Plaintiffs sought review of **the totality of**
4 **the Settlement Agreements; how the Settlements were**
5 **obtained; what terms the Settlements contain; what the**
6 **ordering of the release statements does** "to which party has
7 what rights"; **how TALBOT and GELLMAN precedent's and legal**
8 **standards here in the US affect those Settlements;** and
9 **finally with the settlements themselves what historically**
10 **has been the Performance under those Terms;** and to do this
11 review for both for long-term and for current requirements.

12 33. The Trial Court itself blocked review of any such
13 review and stayed and then dismissed with prejudice.

14
15 **CAUSE: Abuse of Discretion**

16 34. The District Court abused its discretion in numerous areas of
17 this matter. Key ones are outlined below

18 ***Refusal to allow review of Unilateral Rescission in 2004***

19 35. The District Court refused to review the application of the
20 unilateral rescission for fraud in the inducement and prior to
21 performance pertaining to the Patent Transfer Agreement; or the
22 Application of California Appellate Standards permitting rescission of
23 partially completed Contracts per the Memorandum of Points and
24 Authorities supplied with the motion to review rescission standing in
25 the Assignments which was stayed and then dismissed without hearing.;

Refusal to review anything pertaining to the US6393126 patent

1 36. As the creators of the TRUSTED TIMING INFRASTRUCTURE
2 (the TTI) which the US6393126 patent is the IP control for,
3 and that Microsemi licensed the limited use of that IP
4 which did not allow them to file patents in any nation for
5 the TTI, Appellant/Plaintiffs moved the Court to review the
6 INVENTORSHIP on US6393126 which the court dismissed without
7 hearing, functionally completing the Taking Act violation
8 the NSA ran when they used IP this patent controlled in the
9 PRISM SYSTEM for GLOBAL SURVEILLANCE Hardware Bill of
10 Materials;
11

12 37. The Trial Court dismissed without review any of the
13 claims pertaining to US6393126 or the Trusted Timing
14 Infrastructure and as such abused its discretion.
15

Refusal to Take Judicial Notice of properly filed and certified copies of Foreign instances of US6370629

16 38. Appellant/Plaintiffs applied for Judicial Recognition
17 of instances of the US6370620 Patent filed in foreign
18 jurisdictions without releases and then abandoned.
19

20 39. The Court in the original MOTION FOR JUDICIAL NOTICE
21 objected that it needed certified copies of the documents
22 and when those were supplied the Court stayed the hearing
23 and dismissed without review the amended Motion for
24 Judicial Notice.
25

1 40. That refusal to take Judicial Notice by the Court in
2 its Ruling after giving Appellant/Plaintiffs specific
3 notice of "the need to file Certified Copies of the Foreign
4 Patents" was an abuse of Discretion from the Bench and
5 showed the Courts Bias towards Appellant/Plaintiffs.

6 ***Dismissal with Prejudice against future events***

7 41. Both Settlement Agreements have ONGOING PERFORMANCE
8 requirements including section 8.3 and 8.4 that each
9 successor to the Contract must agree fully to the terms.
10 Per section 3.12 of the Settlement these go on forever or
11 until that requirement is renegotiated away in a more
12 reasonable settlement than the original ones financial
13 considerations provided for.

14 42. This was specifically the intent of those sections as
15 well meaning the Courts refusing to review and enforce that
16 sets those key areas of the Contract aside without review
17 before a court.

18 43. The Court in dismissing with Prejudice prevents any
19 future complaints about new actions which have not occurred
20 yet and in doing so functionally set aside any rights the
21 Appellant/Plaintiffs would have in any manner therein.
22 Functionally then by dismissing with prejudice that
23 prevents functional litigation based on future violations
24
25

1 of the section 8.3 and 8.4 of the Settlement Agreements
2 functionally voiding their power;

3 ***Failure to review whether PHASE-II IP inside of VOTING SYSTEMS***
4 ***impacted Apportionment***

5 44. In its dismissal of the Motions for Review the Court
6 whole cloth refused to review whether there was any of the
7 disputed IP called PHASE-II IP used in or as part of voting
8 systems or in the tabulation and vote certification
9 practices in the US at the National, State, and/or County
10 Level and what the implications of that are to the US
11 Electorate. As such the Court refused to review the
12 standing of voting in the US as an byproduct of an alleged
13 fraud in and around the management of US6370629.

14
15 **SUMMARY**

16 45. Appellants simply ask for De Novo review before of the
17 Appellate Court of this matter; Or alternatives the
18 referral to the District Court to complete the hearing and
19 adjudication of the claims therein.

20 Dated this 18th day of July, 2015
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