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**UNITED STATES DISTRICT COURT**  
**San Francisco Division**

Todd S. Glassey In Pro Se and  
Michael E. McNeil In Pro Se,  
  
Plaintiffs,  
  
vs.  
  
Microsemi, et Al.,  
  
Defendants

Case No.: 3:14-CV-03629-WHA  
**PLAINTIFFS' BRIEF RESPONSE in re ORDER TO SHOW CAUSE**  
  
Judge: W.H. Alsup  
Where: Electronically filed by  
When: Dec. 19th 2014, 8:00AM

**PLAINTIFFS' BRIEF RESPONSE in re ORDER TO SHOW CAUSE**

1. Plaintiffs file the following Brief in response to his Honor's Order to Show Cause. The Brief cites both statute and local history and precedent to substantiate that Plaintiffs' Claims are easily identified; the Brief supports the Plaintiffs' allegations while any further necessary explanations can be delivered through verbal

1 testimony should the court feel the need for more clarification on the  
 2 complaint or the allegations therein.

3

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6 **Summary Retort to claims of insufficiency**

7 2. The SAC although clearly written by inexperienced PRO SE litigants is  
 8 proper and meets the minimum litmus test for direct charging of the  
 9 Patent Infringement Claims against US6370629 (and US6393126) as well as  
 10 the Antitrust claims under the Sherman and Clayton acts against  
 11 Microsemi, IETF, Cisco, and those parties involved in the unlicensed  
 12 resale of Plaintiffs' IPs globally.

13 ***The Second Amended Complaint Counts 1-8 properly charges Patent***  
 14 ***Infringement and Antitrust***

15 3. Patent Infringement charged before the Ninth Circuit (as supported by  
 16 the Court of Claims and rulings out of the DC Circuit) is done by  
 17 specifying the patent, the claims infringed, and the allegation of the  
 18 systems, the statement for notice of the infringement, the relief  
 19 demand and the following complaint; as such it meets both requirements  
 20 from **Bell Atlantic v. Twombly (2007)** and **Ashcroft v. Iqbal (2009)**. In  
 21 addition specific frauds are alleged properly against Microsemi in  
 22 Count-1 meeting the specificity hurdle for FRCP 9(b) as well.

23 4. Direct analysis of those systems "to make a factual determination of  
 24 the infringements against the use of PHASE-II IPs" is left to the Trial  
 25

1 and Trier of Fact and is done after the initial complaint filing  
2 generally.

### 3 **Patent Infringement Charges**

4 5. The SAC properly charges patent infringement against all of the named  
5 defendants under 35 USC 271 (a) for their use of equipment and programs  
6 containing those infringing PHASE-II Intellectual Properties for the  
7 Defendants' corporate operations, as well as the subsidiary  
8 inducement/importation claims under 35 USC 271 (b) and (c) for their  
9 "Commercial Importation of systems with firmware and programs which  
10 infringe when executed and the sale of those components to third  
11 parties for their independent use" or like Web Based or Cloud Services,  
12 the use of the PHASE-II services offered from within the Defendants  
13 programs which create their User Experience for those third parties who  
14 become a party to the infringements in the server with like  
15 infringements on the client when those programs are run.

16 6. Those systems are named as Hardware Infrastructure and Networking  
17 Systems as well as Server Platform and Client Platform programs.

### 18 **Antitrust Charges**

19 7. While imperfect in that it doesn't attempt at this time to Qualify  
20 several Classes in this matter for the Antitrust Aspects and Induced  
21 Infringer class, the Second Amended Complaint is functional as an  
22 Antitrust Complaint specifically alleging Sherman Act Section Two and  
23 Clayton Act Section Four allegations against the named Defendants. It  
24 is believed these counts may be expanded through discovery to include  
25 further antitrust claims as well.

1 **The SAC properly alleges US Government Interference with Plaintiffs'**  
2 **Access to the Courts, conversion of their Property and Fraud before the**  
3 **WTO.**

4 8. The SAC further respectfully clarifies the key US Government  
5 Interference Claim (whether through FISA, a Presidential Directive like  
6 PD12333 or NSPD, or the use of the IEEPA [50 USC 1701] or like related  
7 controls), and the State of California Fiduciary Failing Claim, in  
8 regards to allowing the Federal Government to use such an instrument  
9 specifically to strip the Plaintiffs of Property Rights without  
10 compensation, hearing or trial as well.

11 9. The SAC properly alleges (against both Governments - US and California  
12 State) a Fifth Amendment Conversion of Property Rights pertaining to  
13 the Enforcement of Sole Ownership of PHASE-II Intellectual Properties  
14 as protected under US6370629 along with both entities refusing to  
15 provide compensation under Eminent Domain against both the US and  
16 Foreign instances of US6370629 when they formally blocked prosecution  
17 and recovery of those IP rights, something Plaintiffs claim constitutes  
18 a 5th Amendment Property Conversion violation without potential of  
19 court review and as such is unconstitutional.

20 ***No Oversight for discovering whether IEEPA***

21 10. Because under the IEEPA there was never a provision for it being  
22 used to affect property rights of a private citizen it has no mechanism  
23 under Congress' definition of the act for oversight. Because there is  
24 no method for discovering whether IEEPA was used in this matter based  
25 on Congress's writing of the IEEPA itself it would be unconstitutional  
in form to use to manipulate or prevent access to the Courts by serving

1 a IEEPA writ on an Attorney representing Plaintiffs(as the Complaint  
2 alleges fully). In the case of the Government's potential use of the  
3 IEEPA to create an Order for instance, there is no defined oversight or  
4 statement from Congress as to how a US Citizen can fight the  
5 President's declaration "that their property and its use would create  
6 an economic emergency in an international context and so had stopped or  
7 ordered those rights terminated or suspended under the IEEPA".

8 11. So without the Court agreeing that the use of such an order would  
9 interfere with Plaintiffs' rights and their ordering the Government to  
10 functionally Disclose and Disgorge - i.e. to admit formally or deny  
11 formally for the Court such an order exists and for the Court to if it  
12 does to formally order it Quashed as being in violation of the  
13 Plaintiffs' Fourth, Fifth, Seventh and Fourteenth Amendment Rights.

### 14 **The SAC properly notices the Importance of technologies**

15 12. The SAC also properly notices the importance of this specific  
16 piece of litigation *in that most if not all divisions of the Government*  
17 *(Local, State and Federal as well as all other Governments today) rely*  
18 *on infringing equipment, meaning the US Government itself is a consumer*  
19 *and operator of infringing equipment and services*, hence the  
20 requirement for the Three Judge Panel in that not only is  
21 "apportionment" as defined in the US Constitution impossible through  
22 the accepted processes without infringing, the functional operations of  
23 the Court are tied to infringing equipment and systems as well.

24 13. Finally, the SAC supports the Summary Motions for Partial  
25 Judgments on Counts 1, 8, and 10 acknowledging that much of this case

1 can be reviewed and ruled on from the Bench once the basic FRAUD IN THE  
2 TRANSFER OF THE PATENT FROM DDI TO DATUM is recognized and ruled on  
3 herein, since the evidence supporting Plaintiffs' claims is strong.

## 4 **Modular Structure of Counts in the SAC**

5 14. The SAC is composed of a set of Patent Infringement Claims and  
6 associated Antitrust Actions pertaining to the US6370629 and US6393126  
7 Patent Families. The SAC was designed to allow any of the Counts to be  
8 ruled on independently of the others, i.e. Count 9 and 10 against the  
9 State of California and USG can be ruled on separately from Count 1  
10 against Microsemi or Counts 2-8 against the Infringer/Inducers as  
11 alleged in the Complaint.

12 15. This design was to facilitate proper leave way for the Court to  
13 keep the main body of the Litigation inside the Court to keep Statutes  
14 from being needed to be defended again and again, and so any one Count  
15 found improperly plead or otherwise insufficient will and should not  
16 impact any other counts in the matter as filed.

## 17 ***The SAC's Count 1 and Counts 2-8 - Properly Allege Patent*** 18 ***Infringement under 35 USC 271***

19 16. The SAC properly charges 35 USC 271 (a) infringement against  
20 Microsemi in Count 1 and all named Defendants in Counts 2-8.

21 17. The SAC properly charges 35 USC 271 (b) and (c) infringement  
22 against several of the in the same Counts 2-8 for their production of  
23 Softwares which contain PHASE-II Intellectual Properties without  
24 license as well.

1 **The SAC Count 8 properly charges the IETF with Sherman Act and**  
2 **Clayton Act violations tied to Patent Infringement of US6370629's**  
3 **Phase-II IPs**

4 18. In count 8 the SAC properly charges the IETF with Patent Fraud in  
5 the form of relicensing the Patent Protected IP inside of PERFORMANCE  
6 RIGHTS controlled IP (their Published Network Standards Prototype  
7 Documents called RFCs) published and registered with a formal IETF  
8 copyright by the IETF itself. The IETF fraudulently misrepresents its  
9 ability to copyright a Recipe for a Network System and Technology, the  
10 IETF RFC<sup>1</sup>.

11 19. The IETF protecting and relicensing third parties to create  
12 computer programs from their standards documents ("Recipes" or  
13 prototype specifications) is the source of the fraud since those  
14 programs contain steps which are from the CLAIMS from the US6370629  
15 Patent and the IP it Teaches a Method of Use for.

16 20. This is an emerging problem today which Congress has not  
17 addressed, one which they have left to the Courts to interpret at this  
18 point. That question being "What happens when a legitimate Patent  
19 Protected IP is included in a set of programs which are protected under  
20 a third party's copyrights"? In this case created under the guidance of  
21 a party claiming they control the Copyrights controlling all use of  
22 that IP.

23  
24  
25 <sup>1</sup> Recipes are considered "methods" or "procedures" and are not covered under  
the scope of copyright law unless the expression of which constitutes  
"substantial literary expression". (<http://www.copyright.gov/fls/fl1122.html>)



1 21. Because the IETF is in full control of both the systems it uses  
2 and the Copyright Claims it made in publishing those standards and  
3 program templates, they are fully liable.

4 22. Plaintiffs also alleged properly that these actions on behalf of  
5 the IETF are illegitimate Sherman Act Section Two and Clayton Act  
6 Section Four violations (see Count 8) and as such created Antitrust  
7 damage and the Plaintiffs' claim. The Antitrust Market Segment,  
8 Antitrust Damage and Antitrust Sections are properly enumerated in the  
9 SAC's Count 8 as well.

10 23. The SAC additionally charges IETF and Cisco with Antitrust  
11 Violations of the Sherman Act Section-2 over the NEA Protocol fiasco.

12 24. Finally with regard to the NETWORKING STANDARDS INFRINGEMENTS the  
13 SAC properly alleges a set of direct infringements by Defendant IETF in  
14 its use of infringing equipment under 35 USC 271(a) and its issuing  
15 COPYRIGHT PROTECTION against a Recipe, something prohibited under US  
16 Copyright Law and Practice.

17 25. Since the IETF standards themselves are Recipes (Prototypes) they  
18 are specifically covered under the Copyright exclusion to Recipes not  
19 including strong literary content. Hence the only protections an IETF  
20 Standard can have are PERFORMANCE RIGHTS against technologies outside  
21 the IETF copyright itself which are included in those standards.

## 22 **Plaintiffs Have Standing**

23 26. Plaintiffs have standing, whether it's limited to discovery of  
24 their total loss amounts through infringement analysis of each  
25

1 infringing product made by the Defendants or positive forward  
2 enforcement of both damage and licensing; both create direct standing  
3 in this matter.

4 ***Plaintiffs have standing as the original Creator's of PHASE-II***  
5 ***Intellectual Properties the US6370629 Filing is based on***

6 27. Plaintiffs further have standing whether as victims of the  
7 original fraudulent transfer of the US6370629 Patent Filing to Datum  
8 Corp by Digital Delivery Inc in July of 1999 to those against  
9 enforcements today as the Sole Owner of PHASE-II IP and as such the  
10 only party capable of enforcing claims of infringement against it  
11 whether through the IETF's alleged inclusion of it in their standards  
12 or through the Patent's protection of PHASE-II IP itself.

13 **The US Government may not like it but the Plaintiffs' Losses are real**  
14 **whether classified or not**

15 28. Losses against enforcements are just that. Plaintiffs have  
16 numerous non-classified uses to prove the fraud outside of any  
17 Intel/National Security/IEEP type order from the Government. Proper  
18 and realistic damage and loss models can easily be created for each of  
19 these losses to date in each of the Jurisdictions US6370629 was filed  
20 and abandoned in as well.

21 29. That is why the issue of the use of any mechanism of interference  
22 with Plaintiffs' access to the Courts or their Attorneys' ability to  
23 properly represent them is critical to adjudicate with the three judge  
24 panel motion first in this matter.  
25

1 30. Losses which top trillions would be considered information so  
2 detrimental to the commerce operations of a Government, no government  
3 would want released, especially since it would mean their existing  
4 financial statements about GDP and other key statistics were not just  
5 wrong but very wrong. So it is easy to understand why a Government  
6 Official might be mistakenly motivated to issue a special piece of  
7 paper, one which would have the chilling effect of preventing the  
8 Plaintiffs' Attorneys from constructively representing them in any form  
9 before this or any Court of Law in the US.

10 31. In the event a FISA, IEEPA or other Presidential Directive was  
11 used to strip Plaintiffs of their property and access-to-the-court  
12 rights, Plaintiffs have standing to demand review of the issuance of  
13 that order and its Constitutionality before this the US District Court.

14 **Count-1 Infringement, Tortuous Interference, and Antitrust Violations under**  
15 **Sherman Act Section Two, and Clayton Act Section Four violations**

16 32. Count-1 (SAC p45) in particular properly pleads both Infringement  
17 under 35 USC 271 (a) and inducement to infringe, as well as Tortuous  
18 Interference, violations of the International Antitrust Act and Sherman  
19 Act Section Two and Clayton Act Section Four violations.

20 33. As just one of the properly stated complaints in the SAC,  
21 unbeknownst to Plaintiffs until well after the Patent was issued, the  
22 File Wrapper revealed that Microsemi had committed additional frauds  
23 and that the Patent had numerous reorganizations of claims to place key  
24 certification-controls into claims which were not intended to contain  
25

1 them. Additionally also we find there was an entire claim added after  
2 the Settlement without authorization or notice in 2001.

3 34. This functionally made all of the original US6370629 a repository  
4 of PHASE-II Technology and functionally divorced it from the underlying  
5 practices in the '992 Patent that controlled the DDI Confidential  
6 Courier product.

7 35. Those unlicensed additional controls were instead supposed to be  
8 filed in the proposed separate GLASSEY/MCNEIL Patent application. The  
9 filing of these changes functionally prevented Plaintiffs from  
10 registering what would become the MASTER PHASE-II Technology Patent  
11 because functionally, with the changes made to the US6370629 which were  
12 not authorized, Microsemi in effect filed the Glassey/McNeil Patent.

13 36. When confronted on the Changes they replied that Glassey and  
14 McNeil's rights were safe and that they did "what it took to get the  
15 patent issued as the FIDUCIARY Managing the Patent Application for us".

## 16 **The Matter is Timely Filed**

17  
18 37. Plaintiffs have current Sherman Act claims which pertain to  
19 current actions (within the last 24 months), as well as claims  
20 pertaining to documents controlled under California Law, meaning four  
21 years (48 months).

22 38. Additionally someone, either Microsemi Shareholders or  
23 Plaintiffs, owns a claim for PHASE-II Infringements under 35 USC 271  
24 (a) against all of the named Defendants, a claim which is properly  
25

1 plead in COUNTS 1-8. Each new infringement tolling out any statutes  
2 therein.

3 39. Finally the *ongoing offense claim* is also properly plead, and it  
4 tolls out any statute of limitations arguments for specific acts as  
5 well.

## 6 **The Apportionment Control Argument**

7  
8 40. In the United States the Government - the Congress, the Courts,  
9 and all aspects of the Administrative Branch today - are totally  
10 reliant on Computers and the Networks and Back-End Services which link  
11 them.

12 41. The processes which implement the Constitutional Apportionment  
13 Practices as defined in the US Constitution are controlled by numerous  
14 infringements in Claims 19-32 of US6370629. That means the practices  
15 which implement the Congressional Actions Supporting Constitutional  
16 Apportionment must by their very practice infringe on Plaintiffs'  
17 Property Rights and as such Plaintiffs are entitled to the Eminent  
18 Domain fees owed to them by all of the States as well as the Federal  
19 Government which are using those systems without remuneration in any  
20 form to the Plaintiffs today.

21 42. This is why a THREE JUDGE PANEL should be mandatory in this  
22 matter, to protect the Court's use of this same IP without  
23 compensation, since the Courts themselves which are the oversight for  
24 the Apportionment Practice question are also tied to the same  
25

1 Infringement or Fraud Loss component of Plaintiffs' IP Rights against  
2 the patent filing of US6370629.

3 ***US6370629 should control most online commerce in the US today***

4  
5 43. Today all computers running networking and many with applications  
6 using Location Based Services all infringe at the very least on Claims  
7 19-32 of US6370629 as a 35 USC 271 (a) type infringement. The  
8 infringements are built into two separate areas of the systems, the  
9 networking in the actual protocols and tools (like Secure DNS), as well  
10 as those programs which implement some User Experience or Web-Based  
11 Commerce Platform. Each of the Infringing Claim Constructions is very  
12 simple to articulate and constrain. The actual specific areas of each  
13 infringing program can be mapped out in a manner allowing for a fast  
14 review and approval cycle by the Court as well, they are that obvious.

15 **US6370629 - whoever owns it is a multi-billion dollar asset which has been  
16 kept off book**

17 44. Because of what it controls the failure to enforce '629 needs to  
18 be reported to the shareholders of Microsemi both as a fraud loss and  
19 to document the abandonment to the Shareholders of this asset and the  
20 financial damage it caused the Plaintiffs, and likely the US.

21 45. Which means that US6370629, whoever owns it, the value must be  
22 reported either as an asset or loss, and yet its value doesn't appear  
23 anywhere on any corporate ledgers or the loss of opportunity either.  
24 This also is something which will be worked out by a Trier of Fact.  
25

1 **Plaintiffs and their Loss Types**

2 46. The Plaintiffs are either entitled to the enforcements they claim  
3 or a loss against the Settlement issuance itself and what it cut into  
4 relative to their original rights.

5 That means today a total loss for all seven of the abandoned foreign Patents  
6 known as of this filing, as well as the previous 14 years of US6370629 Patent  
7 at the very least.

8 **Summary**

9  
10 47. Plaintiffs believe that the complaint is fully sufficient and  
11 asks for specific help in a very unusual manner.

12 48. Plaintiffs assert that based on the fact there is confusion as to  
13 what their rights to Phase-II IP are today and how they are to enforce  
14 those against programs now running in the public and private spheres  
15 which infringe that this matter should proceed.

16  
17 12-18-2014  
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