

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Charles H. Moore,

NO. C 10-04747 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND; DENYING  
DEFENDANTS' MOTIONS AS MOOT**

v.

Technology Properties Limited, LLC, et al.,

Defendants.

**I. INTRODUCTION**

Charles H. Moore ("Plaintiff") brings this action against Defendants<sup>1</sup> alleging, *inter alia*, breach of contract, fraudulent promise and conspiracy to commit fraud. Plaintiff alleges that Defendants retained the licensing proceeds from a portfolio of patents which Plaintiff owned without paying royalties to Plaintiff, in contravention of the parties' agreement.

Presently before the Court are: (1) Defendants' Motion to Compel Arbitration;<sup>2</sup> (2) Defendants' Motion to Dismiss Plaintiff's Complaint;<sup>3</sup> and (3) Plaintiff's Motion to Remand Removed Action.<sup>4</sup> The Court finds it appropriate to take the Motions under submission without oral

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<sup>1</sup> Defendants are Technology Properties Limited, LLC ("TPL"), Alliacense LLC ("Alliacense"), Daniel Edwin Leckrone ("DE Leckrone"), Daniel McNary Leckrone ("DM Leckrone") and Michael Davis ("Davis").

<sup>2</sup> (Docket Item No. 9.)

<sup>3</sup> (Docket Item No. 11.)

<sup>4</sup> (hereafter, "Motion to Remand," Docket Item Nos. 20, 21.)

argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court GRANTS Plaintiff's Motion to Remand and DENIES Defendants' Motions.

## **II. BACKGROUND**

### **A. Factual Allegations**

In a Complaint filed on September 27, 2010,<sup>5</sup> Plaintiff alleges as follows:

TPL is a California limited liability company with its principle place of business in Santa Clara and Alliacense is a Delaware limited liability company that is a wholly owned subsidiary of TPL. (Complaint ¶¶ 1-2.) DE Leckrone and DM Leckrone are licensed California attorneys, and the Chairman of the Board of TPL and the President of Alliacense, respectively. (Complaint ¶¶ 3-4.) Davis was the Executive Vice President of Licensing for Alliacense. (Id. ¶ 5.) Plaintiff and DE Leckrone began a continuing attorney-client relationship sometime prior to October 2002, when DE Leckrone assisted Plaintiff in reacquiring rights to certain patents Plaintiff owned and negotiating an employment contract between Plaintiff and a third-party company. (Id. ¶¶ 11-14.) Eventually, Plaintiff began negotiation of an agreement whereby DE Leckrone, through TPL, would agree to commercialize Plaintiff's patent portfolio by licensing the patents to third party companies. (Id. ¶ 19.) Plaintiff believed that the commercialization agreement he signed only granted TPL the right to license Plaintiff's patent portfolio on Plaintiff's behalf. (Id. ¶ 25.)

While the licensing efforts met with substantial initial success, Defendants failed to make regular royalty payments or to provide Plaintiff with an accounting of revenues and expenses, in contravention of the commercialization agreement. (Complaint ¶¶ 32-33.) Revenues generated by the licensing of Plaintiff's patent portfolio were diverted to support TPL's business expansion into the acquisition and licensing of unrelated patent portfolios. (Id. ¶¶ 34-38.) Further, Defendants began incurring unreasonable business expenses which were passed through to Plaintiff. (Id.) Plaintiff eventually re-negotiated with Defendants

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<sup>5</sup> (Notice of Removal, Ex. A at 47-75, hereafter, "Complaint," Docket Item No. 1.)

1 and agreed to a written amendment to the original commercialization agreement which  
 2 restructured how expenses and payments were to be distributed between Plaintiff and  
 3 Defendants. (Id. ¶¶ 42-43.)

4 On September 27, 2006, Defendants breached the commercialization agreement and  
 5 continue to be in breach of the agreement to this day. (Complaint ¶¶ 47, 111.) Defendants'  
 6 ongoing breach of the obligations set forth in the commercialization agreement and the  
 7 amendment include: (1) wrongful conversion of all right, title and interest in the most  
 8 valuable patents in Plaintiff's portfolio through the filing of assignment papers with the  
 9 United States Patent and Trademark Office; (2) failure to make royalty payments; (3) failure  
 10 to provide quarterly operating statements and balance sheets; (4) failure to exert reasonable  
 11 efforts to commercialize Plaintiff's patent portfolio; (5) failure to advise Plaintiff of any  
 12 licenses entered into involving Plaintiff's patent portfolio; and (6) failure to provide a  
 13 contractually mandated security interest in Plaintiff's patent portfolio. (Id.)

14 On the basis of the allegations outlined above, Plaintiff alleges eight causes of action: (1)  
 15 Cancellation of Instrument by Means of Fraud of Attorney as to all Defendants; (2) Cancellation of  
 16 Instrument by Means of Mistake or Misrepresentation as to all Defendants; (3) Rescission of the  
 17 Commercialization Agreement as to Defendants TPL and DE Leckrone; (4) Rescission of  
 18 Amendment One to the Commercialization Agreement as to Defendants TPL and DE Leckrone; (5)  
 19 Conspiracy to Commit Fraud as to all Defendants; (6) Breach of Contract as to Defendants TPL and  
 20 Alliacense; (7) Constructive Trust and Accounting as to Defendants TPL and DE Leckrone; and (8)  
 21 Preliminary and Permanent Injunction as to all Defendants.

## 22 **B. Procedural History**

23 On September 27, 2010, Plaintiff filed this Complaint in the Superior Court of California for  
 24 the County of Santa Clara. (Notice of Removal ¶ 1, Docket Item No. 1.) On October 5, 2010,  
 25 Defendants TPL and Alliacense were served. (Id. ¶ 2.) On October 20, 2010, Defendants removed  
 26 the action to federal court alleging original jurisdiction under 28 U.S.C. §§ 1331 and 1338. (Id. ¶ 3.)  
 27 Specifically, Defendants alleged that the claims asserted in the Complaint arise under federal law,  
 28

1 and Plaintiff's right to relief on the claims alleged necessarily depends on the resolution of  
2 substantial questions of federal patent law. (Id.)

3 Presently before the Court are various Motions by the parties. As Plaintiff's Motion to  
4 Remand may be dispositive, the Court will address this Motion first.

### 5 **III. STANDARDS**

6 If, prior to final judgment, the district court discovers its lack of subject matter jurisdiction, it  
7 must remand the case. 28 U.S.C. § 1447(c). A defendant seeking removal of an action to federal  
8 court bears the burden of establishing grounds for federal jurisdiction. Quinones v. Target Stores,  
9 No. C 05-3570, 2005 U.S. Dist. LEXIS 31915, at \*4 (N.D. Cal. Nov. 23, 2005). Removal statutes  
10 are construed restrictively. Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1393 (9th Cir.  
11 1988). Doubts as to removability are resolved in favor of remanding the case to state court.  
12 Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Gaus v. Miles, Inc., 980 F.2d  
13 564, 566 (9th Cir. 1992).

### 14 **IV. DISCUSSION**

#### 15 **A. Motion to Remand**

16 Plaintiff moves to remand this action to state court on the ground that none of Plaintiff's  
17 eight causes of action arise under federal patent law. (Motion to Remand at 6-7.) Defendants  
18 contend that Plaintiff has alleged claims that require the application and determination of federal  
19 patent law.<sup>6</sup>

20 Title 28 U.S.C. § 1338(a) provides that the district courts shall have original and exclusive  
21 jurisdiction of any civil action arising under any act of Congress relating to patents. Section 1338(a)  
22 jurisdiction extends "only to those cases in which a well pleaded complaint establishes either [(1)]  
23 that federal patent law creates the cause of action or [(2)] that the plaintiff's right to relief  
24 necessarily depends on resolution of a substantial question of federal patent law, in that patent law is  
25 a necessary element of one of the well pleaded claims." Christianson v. Colt Indus. Operating

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27 <sup>6</sup> (Defendants' Opposition to Plaintiff's Motion to Remand Removed Action at 1, hereafter,  
28 "Opposition," Docket Item No. 26.)

1 Corp., 486 U.S. 800, 808-09 (1988). “If on the face of a well-pleaded complaint there are reasons  
 2 completely unrelated to the provisions and purposes of the patent laws why the plaintiff may or may  
 3 not be entitled to the relief it seeks, then the claim does not ‘arise under’ those laws.” Id. at 810  
 4 (internal citations and quotations omitted). “It is well settled that if the [plaintiff] pleads a cause of  
 5 action based on rights created by contract, or on the common law of torts, the case is not one ‘arising  
 6 under’ the patent laws.” Jim Arnold Corp. V. Hydrotech Sys., Inc., 109 F.3d 1567, 1572 (Fed. Cir.  
 7 1997) (citations omitted).<sup>7</sup>

8 Here, the Court finds that none of Plaintiff’s claims meet the test set forth in Christianson for  
 9 jurisdiction under federal patent law. Plaintiff’s claims and the damages Plaintiff seeks are based  
 10 solely on state law. For example, Plaintiff seeks relief from the parties’ contract on the grounds of  
 11 fraud and mistake<sup>8</sup> or rescission of the agreement.<sup>9</sup> In addition, Plaintiff seeks damages that arise  
 12 under state law causes of action including breach of contract<sup>10</sup> and conspiracy to commit fraud.<sup>11</sup>  
 13 Further, Plaintiff seeks imposition of a constructive trust<sup>12</sup> and an injunction.<sup>13</sup> Finally, to the extent  
 14 there is a conflict regarding ownership of the patent portfolio, that too is a matter for the state court,  
 15 as claims concerning patent ownership do not create federal jurisdiction. See Jim Arnold Corp., 109

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17 <sup>7</sup> See also Prize Frize, Inc. v. Matrix, Inc., 167 F.3d 1261, 1264 (Fed. Cir. 1999), abrogated  
 18 by statute on other grounds, (finding allegations that defendant’s unfair, unlawful and collusive  
 19 actions deprived the plaintiff of its ownership of four patents did not arise under federal patent law  
 20 and thus deprived Federal Circuit of appellate jurisdiction); Tech. Licensing Corp. v. Intersil Corp.,  
 21 No. 09-4097, 2009 U.S. Dist. Lexis 129941, at \*1-3 (N.D. Cal. Dec. 18, 2009) (finding that remand  
 22 was proper because, although the parties’ dispute arose from a patent license agreement, the  
 23 plaintiff’s complaint asserted only breach of contract and related state law claims).

24 <sup>8</sup> See Cal. Civ. Code § 3412

25 <sup>9</sup> See Cal. Civ. Code § 1692.

26 <sup>10</sup> See Cal. Civ. Code § 3300.

27 <sup>11</sup> See Cal. Civ. Code § 3294(a).

28 <sup>12</sup> See Cal. Civ. Code §§ 2223, 2224; Communist Party v. 522 Valencia, Inc., 35 Cal. App.  
 4th 980, 990 (Cal. App. 1995).

<sup>13</sup> See Cal. Civ. Code §§ 3420, *et seq*; Cal. Code. Civ. Proc. § 527(a).

1 F.3d at 1572. Thus, federal patent law does not create any of Plaintiff's causes of action, nor does  
 2 Plaintiff's right to relief necessarily depend on resolution of a substantial question of patent law.

3 Defendants rely on U.S. Valves, Inc. v. Dray<sup>14</sup> and Smith v. Healy<sup>15</sup> as support for the  
 4 contention that Plaintiff's claims are preempted by federal patent law. (Opposition at 7.) The Court  
 5 finds both cases distinguishable. In U.S. Valves, the plaintiff, an exclusive patent licensee, alleged  
 6 the defendant licensor breached the license by selling patented products. 212 F.3d at 1372. The  
 7 Federal Circuit held that the licensee's right to relief required an interpretation of the patents in order  
 8 to determine if the sold products were covered by the licensed patents. Id. Similarly, the plaintiffs  
 9 in Smith, "[sought] general damages for [d]efendants' production of [p]laintiff's product without  
 10 [p]laintiffs' permission rather than seeking enforcement of a royalty agreement." 2010 U.S. Dist.  
 11 LEXIS 107627, at \*22. Here, unlike U.S. Valves or Smith, Plaintiff does not allege that Defendants  
 12 sold any allegedly infringing product, but instead alleges that Defendants were engaged in efforts to  
 13 commercialize Plaintiff's inventions by way of licensing efforts. Plaintiff is seeking relief from a  
 14 contract which he alleges was entered into by means of fraud or mistake, or alternatively, damages  
 15 for Defendants' failure to abide by the terms of that contract. Thus, no analysis or construction of  
 16 the patents is required. Rather, the analysis will involve consideration of state law principles such as  
 17 contract formation and performance.

18 Accordingly, the Court GRANTS Plaintiff's Motion to Remand.

19 **B. Motion to Compel Arbitration and Motion to Dismiss**

20 Defendants move to compel arbitration on the ground that the parties' agreement included a  
 21 provision requiring submission of any dispute arising under the agreement to binding arbitration.<sup>16</sup>  
 22 In addition, Defendants move to dismiss Plaintiff's Complaint on the grounds that Plaintiff fails to  
 23 allege sufficient facts to state any claim against DE Leckrone, DM Leckrone, Davis or Alliacense

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24 <sup>14</sup> 212 F.3d 1368 (Fed. Cir. 2000).

25 <sup>15</sup> No. 10-0072, 2010 U.S. Dist. LEXIS 107627 (D. Or. Oct. 7, 2010).

26 <sup>16</sup> (Memorandum of Points and Authorities in Support of Defendants' Motion to Compel  
 27 Arbitration at 1, Docket Item No. 9.)

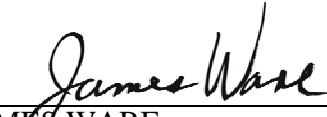
1 and that Plaintiff fails to allege any claim for injunctive relief, cancellation or rescission.<sup>17</sup> In light  
2 of the Court's decision to remand this action to state court, the Court DENIES Defendants' Motions  
3 as moot.

4 **V. CONCLUSION**

5 The Court GRANTS Plaintiff's Motion to Remand and DENIES Defendants' Motion to  
6 Compel Arbitration and Motion to Dismiss as moot.

7 The Clerk shall immediately remand this case to the Superior Court of California, County of  
8 Santa Clara and close this file. Each party shall bear their own fees and costs.

9  
10 Dated: January 20, 2011

  
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JAMES WARE  
United States District Chief Judge

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27 <sup>17</sup> (Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss  
28 Pursuant to F.R.C.P. Rule 12(b)(6) at 1, Docket Item No. 11.)

**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: January 20, 2011**

**Richard W. Wieking, Clerk**

**By: /s/ JW Chambers  
Elizabeth Garcia  
Courtroom Deputy**

# EXHIBIT B

1 CHILES and PROCHNOW, LLP  
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2 Robert C. Chiles (SBN:056725)  
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5 Attorneys for Charles H. Moore

ENDORSED

2010 SEP 27 PM 4:09

David H. Flores, Clerk of the Superior Court  
County of Santa Clara, California

By: \_\_\_\_\_

David H. FLORESCA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CLARA  
10 UNLIMITED JURISDICTION  
11

12 Charles H. Moore

13 Plaintiff,

14 vs.

15 Technology Properties Limited, LLC, a  
California limited liability company; Alliacense  
16 LLC, a Delaware limited liability company;  
Daniel Edwin Leckrone, an individual; Daniel  
17 McNary Leckrone, an individual; Michael  
Davis, an individual, and DOES 1 through 100,  
18 inclusive,

19 Defendants.

Case No.

110CV183613

**Complaint for Cancellation of Instrument; for  
Rescission and Restitution; for Damages for  
Fraudulent Promise; for Contractual  
Damages; for Conspiracy; for Breach of  
Contract; for Constructive Trust and  
Accounting; and for Preliminary and  
Permanent Injunction**

21 Plaintiff Charles H. Moore ("Plaintiff Moore") complains and alleges as follows:

22 1. Defendant Technology Properties Limited, LLC, is a California limited liability  
23 company (and is the successor to, and was formerly known as, Technology Properties Limited, a  
24 California corporation (individually and collectively, "TPL")). At all pertinent times TPL has had  
25 its principal place of business in Santa Clara County, California.

26 2. Defendant Alliacense LLC ("Alliacense") is a Delaware limited liability company  
27 which has at all pertinent times been located at and within the TPL corporate offices in Santa  
28 Clara County, California. Upon information and belief, Defendant Alliacense is and at all pertinent

1 times has been a wholly owned subsidiary of Defendant TPL.

2         3.       Defendant Daniel Edwin Leckrone ("Attorney Leckrone") is a licensed California  
3 attorney who has at all pertinent times resided in Santa Clara County, California. At all pertinent  
4 times, Attorney Leckrone was the Chairman of the Board of TPL.

5         4.       Defendant Daniel McNary Leckrone (sometimes known as "DML"; "Defendant  
6 Mac Leckrone") is the son of Attorney Leckrone, and was at pertinent times the President of  
7 Defendant Alliacense. Attorney Leckrone and Defendant Mac Leckrone have at all pertinent times  
8 controlled the affairs and business of Defendant Alliacense. Defendant Mac Leckrone is a licensed  
9 California attorney who has at all pertinent times resided in Santa Clara County, California.

10        5.       Defendant Michael Davis ("Defendant Davis") is an individual resident of Santa  
11 Clara County, California. At all pertinent times, Defendant Davis was the Executive Vice-  
12 President of Licensing for Defendant Alliacense.

13        6.       Plaintiff Moore is ignorant of the names and capacities of defendants sued as  
14 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.  
15 Plaintiff Moore will amend this complaint to allege their true names and capacities when  
16 ascertained.

17        7.       Prior to October 2002, Attorney Leckrone formed a continuing attorney-client  
18 relationship with Plaintiff Moore.

19        8.       Specifically, prior to 2002, Plaintiff Moore was working on the development of  
20 computer chips he had developed, and whose design he had patented, with a French company,  
21 "TRIO S.A." or a subsidiary of the TRIO S.A. company (individually and collectively, "TRIO").

22        9.       Plaintiff Moore was, during this period, receiving a monthly payment from TRIO.  
23 As time went on, Plaintiff Moore determined that other entities, with other approaches, might be  
24 more effective in developing and exploiting the commercial potential of his patents. Plaintiff  
25 Moore began exploring the possibility of working with "iTV," a US company.

26        10.      TRIO objected to Plaintiff Moore working with iTV, on the asserted ground that  
27 TRIO had some type of exclusive relationship with Plaintiff Moore concerning his patents. TRIO  
28 began withholding the monthly payments it had previously been making to Plaintiff Moore.

1           11.     Plaintiff Moore had, by this time, met Attorney Leckrone. When Plaintiff Moore  
2 explained the difficulty he was having with TRIO, and the relationship Plaintiff Moore wished to  
3 build with iTV, Attorney Leckrone offered legal assistance. Specifically, Attorney Leckrone told  
4 Plaintiff Moore that he had already planned a trip to Europe on unrelated matters, and that he was  
5 willing to go to Paris to meet with TRIO and to negotiate a settlement that would permit Plaintiff  
6 Moore to pursue his opportunities with iTV.

7           12.     On Plaintiff Moore's behalf, Attorney Leckrone went to Paris and negotiated a  
8 successful resolution of the dispute with TRIO – a settlement that permitted Plaintiff Moore to  
9 move forward with development of certain of his patents with iTV.

10          13.     When iTV proposed an employment agreement to Plaintiff Moore, Plaintiff Moore  
11 gave a copy of the agreement to Attorney Leckrone, who Plaintiff Moore now viewed as his  
12 attorney. Attorney Leckrone pronounced the proposed agreement "terrible," and said that he could  
13 negotiate a better one. Plaintiff Moore authorized Attorney Leckrone to negotiate a better  
14 agreement on Plaintiff Moore's behalf.

15          14.     Attorney Leckrone, acting as Plaintiff Moore's attorney, proceeded to negotiate an  
16 employment agreement for Plaintiff Moore with iTV. Under the agreement that Attorney  
17 Leckrone negotiated, Plaintiff Moore assigned two of his patents to iTV, and iTV agreed to make  
18 regular monthly payments to Plaintiff Moore. For his legal services, Plaintiff Moore agreed to give  
19 to Attorney Leckrone a designated percentage (21.25%, more or less) of the payments that  
20 Plaintiff Moore received from iTV.

21          15.     For a number of months, iTV made regular payments to Plaintiff Moore, pursuant  
22 to the employment contract that Attorney Leckrone had negotiated for him. In turn, Plaintiff  
23 Moore duly forwarded to Attorney Leckrone his designated share of the contract proceeds, in  
24 payment for the legal services that Attorney Leckrone had rendered.

25          16.     By early 2002, iTV had largely ceased operations, and was not actively developing  
26 or commercializing the two patents that Plaintiff Moore had assigned to iTV. At or about that  
27 same time, Attorney Leckrone and Plaintiff Moore had begun their own discussions of possible  
28 licensing activities that Attorney Leckrone might be able to carry out for Plaintiff Moore's patent

1 portfolio.

2 17. Plaintiff Moore was concerned that potentially valuable rights and revenues might  
3 be lost if the two patents he had assigned to iTV remained with that company, as iTV ceased  
4 operations, became insolvent and was subject to the claims and liens of creditors. Attorney  
5 Leckrone agreed to represent Plaintiff Moore in retrieving the patents he had assigned to iTV.

6 18. Attorney Leckrone, on Plaintiff Moore's behalf, successfully located and  
7 negotiated with the iTV chairman, finding that officer at his residence in Menlo Park, California.  
8 Attorney Leckrone prepared and presented the iTV chairman with a document that Attorney  
9 Leckrone had prepared on Plaintiff Moore's behalf. In or about February 2002, the iTV chairman  
10 signed Attorney Leckrone's assignment document, with Attorney Leckrone standing by as  
11 witness, and the two patents were restored to Plaintiff Moore's ownership.

12 19. With the two patents restored to the Moore Microprocessor ("MMP") technology  
13 that Plaintiff Moore had invented, the entire portfolio of patents were thereafter referred to as  
14 Plaintiff Moore's "MMP Portfolio." Plaintiff Moore and Attorney Leckrone began negotiation of  
15 an agreement whereby Attorney Leckrone, through TPL, which was then a largely inactive and  
16 moribund corporation, would undertake the commercialization of the MMP Portfolio through  
17 licensing of the patents in the MMP Portfolio to third parties.

18 20. By October 2002, Defendant Leckrone had completed his drafting of a  
19 "Commercialization Agreement" (hereafter, the "ComAg"), between Plaintiff Moore and Attorney  
20 Leckrone's company TPL.

21 21. On the day before the ComAg was signed in or about October 2002, Attorney  
22 Leckrone met with Plaintiff Moore in the offices of Attorney Leckrone's company TPL in Santa  
23 Clara County, California, for the purpose of review and explanation of the ComAg that Attorney  
24 Leckrone had drafted.

25 22. Before and at the time of this meeting, Plaintiff Moore viewed Attorney Leckrone  
26 as his attorney and legal counsel. Plaintiff Moore had no other legal counsel or representation in  
27 the negotiation and execution of the ComAg. At no time before, or after, the execution of the  
28 ComAg did Attorney Leckrone terminate the attorney-client relationship that existed between

1 Attorney Leckrone and Plaintiff Moore.

2       23.     At the meeting between Attorney Leckrone and Plaintiff Moore, Attorney  
3 Leckrone went through the ComAg with Plaintiff Moore page-by-page and line-by-line. Attorney  
4 Leckrone and Plaintiff Moore put their respective initials at the bottom of each page of the ComAg  
5 that they reviewed, with Attorney Leckrone giving an explanation of each of the provisions of the  
6 ComAg, and of the then-available exhibits to the ComAg. The available exhibits included ComAg  
7 Exhibits A ("License") and B ("Assignment"); the exhibits did not then include, and have never  
8 included, any Exhibit H, which by its description in the ComAg table of contents was apparently  
9 to have been a document "prohibiting" an attorney-client relationship between Attorney Leckrone  
10 and Plaintiff Moore.

11       24.     In undertaking his review of the ComAg with Plaintiff Moore, Attorney Leckrone  
12 stated that no modifications or changes to the ComAg would be allowed; the document he drafted  
13 was in "take it or leave it" form.

14       25.     Because Plaintiff Moore had only earlier that year retrieved the two patents that had  
15 been assigned to iTV – and because he was concerned that there be no question that he was  
16 retaining ownership of the MMP Portfolio, granting to Attorney Leckrone's company TPL only  
17 the right to license the MMP Portfolio – Plaintiff Moore asked for and received oral assurance  
18 from Attorney Leckrone that the agreement that Attorney Leckrone was presenting was a licensing  
19 agreement only, and that the only right being assigned to Attorney Leckrone's company TPL  
20 under the ComAg was the right to license the MMP Portfolio.

21       26.     In addition, one section of the ComAg stated that Plaintiff Moore had retained  
22 independent counsel in connection with the ComAg, and that such independent counsel had  
23 reviewed and approved the ComAg on Plaintiff Moore's behalf. When Attorney Leckrone  
24 described this language – which he had drafted before meeting with Plaintiff Moore and without  
25 consultation with him – Plaintiff Moore told Attorney Leckrone that he lacked the resources to  
26 retain independent counsel to review the ComAg, had not retained independent counsel for that  
27 purpose, and would not retain independent counsel.

28       27.     Plaintiff Moore initialed all pages of the ComAg that were put before him during

1 Attorney Leckrone's review of the document with him, which included the ComAg itself, Exhibits  
2 A, B, C, E, F, and G, and an unsigned copy of a UCC-1 form as Exhibit D. He took an execution  
3 copy of the ComAg with him to his home in the Lake Tahoe area, to review the ComAg with his  
4 wife.

5 28. On or about the next day, having discussed the document with his wife, and having  
6 repeated to her Attorney Leckrone's assurance that the ComAg was a transfer to TPL of the right  
7 to license the MMP Portfolio only, with all other ownership rights remaining with Plaintiff Moore  
8 as the inventor, Plaintiff Moore signed the ComAg, as prepared and drafted by Attorney Leckrone,  
9 without any modification to the terms Attorney Leckrone specified and drafted.

10 29. Upon information and belief, the original of the ComAg remains in existence, in  
11 the custody and control of Defendant TPL. Upon information and belief, the ComAg does not  
12 include and has never included signed copies of Exhibit D (the UCC-1), no copy of which was  
13 ever signed by Plaintiff Moore, or of the agreement suggested by the ComAg table of contents as  
14 "Exhibit H."

15 30. By its terms, the ComAg does not terminate or sever the pre-existing attorney-  
16 client relationship between Attorney Leckrone and Plaintiff Moore; in the time since the ComAg  
17 was executed, Attorney Leckrone has taken no separate or independent steps to sever or terminate  
18 that relationship.

19 31. The substantive terms of the ComAg that Attorney Leckrone drafted for the  
20 signature of Plaintiff Moore were, in pertinent part, as follows-

21 - Plaintiff Moore granted to TPL a license for the purpose of permitting TPL to commercialize the  
22 MMP technology (ComAg, p. 2 & Sec. 1. & 2. thereof; Exhibit A to the ComAg);

23 - Plaintiff Moore granted to TPL a limited assignment of certain rights with respect to the licensed  
24 MMP technology (ComAg, p. 2, Sec. 1.2); specifically, under Exhibit B to the ComAg, Plaintiff  
25 Moore assigned to Defendant TPL a minority share (45%) of Plaintiff Moore's right, title and  
26 interest to the MMP technology, with Plaintiff Moore retaining a majority share (55%) of the  
27 MMP technology.

28 - TPL agreed to exert reasonable efforts to "commercialize" the MMP technology, with the nature,

1 scope and extent of TPL's anticipated efforts spelled out in the ComAg (ComAg Sec. 2);  
2 - certain "Project Expenses" reasonably incurred by TPL were to be charged against the  
3 commercialization project (ComAg Sec. 3.);  
4 - The parties agreed that "...decisions to license, exchange, encumber, transfer, sell, affiliate, or  
5 settle any rights or claim with respect to the Licensed [MMP] Technology shall be evaluated and  
6 discussed by the parties, but shall be the province of TPL." (ComAg Sec. 5.1);  
7 - TPL agreed to pay to Plaintiff Moore a royalty under the licenses granted to TPL, in an amount  
8 equal to Fifty-Five Percent (55%) of a defined "Net Recovery" realized from the revenues  
9 generated by such licenses (ComAg Sec. 6.1.);  
10 - TPL further agreed that within 60 days of the close of each calendar quarter, TPL would deliver  
11 to Plaintiff Moore (1) an operating statement and balance sheet reflecting the Project's financial  
12 activity over that quarter; (2) a calculation of the Net Recovery resulting from the Project  
13 operations and the royalty due thereon; and (3) payment to Plaintiff Moore of the calculated  
14 royalty amount due (ComAg Sec. 6.2.);  
15 - TPL was to disburse the gross proceeds of the Project in accordance with a schedule of priorities,  
16 with those priorities set out in the ComAg (ComAg Sec. 7.); and  
17 - each party was to have a security interest in the Licensed [MMP] Technology and the proceeds  
18 thereto, with that security interest reflected in a UCC-1 in the form of Exhibit D to the ComAg  
19 (ComAg Sec. 7.3).

20       32. TPL's initial efforts at commercializing Plaintiff Moore's MMP technology met  
21 with substantial initial success; upon information and belief, TPL's commercialization efforts for  
22 the MMP technology yielded some \$20 million in 2005; some \$100 million in 2006; and an  
23 additional \$100 million in 2007. At no time, however, did TPL furnish the quarterly reports  
24 mandated by Section 6.2. of the ComAg (leaving Plaintiff Moore unaware of and unable to  
25 comment upon or object to the expenses Defendant TPL might choose to charge against the  
26 royalty payments due to him); rather, TPL made occasional royalty payments to Plaintiff Moore in  
27 the years after 2002, with those payments eventually totaling some \$11 million.

28       33. TPL has never accounted to Plaintiff Moore for its gross revenues and expenses for

1 TPL's commercialization of the MMP Portfolio.

2 34. In or about 2005, TPL and Patriot Scientific Corporation ("PTSC") settled certain  
3 litigation over 50% of the MMP Portfolio as to which ownership had been disputed. As a result of  
4 this settlement of the MMP Portfolio litigation between TPL and PTSC, another  
5 Commercialization Agreement was created, this one between and among TPL, Plaintiff Moore and  
6 PTSC. Under this three-party Commercialization Agreement, TPL assumed full licensing  
7 responsibility for the entirety of all MMP technology (including the MMP Portfolio it had  
8 previously been licensing under the above-described ComAg). In light of the settlement between  
9 TPL and PTSC, and pursuant to the three-party Commercialization Agreement, Plaintiff Moore's  
10 royalty rights were adjusted: TPL gained the right to deduct a flat 15% for its licensing expenses  
11 for the entire MMP Portfolio, with Plaintiff Moore's royalty then to be calculated at 55% of one-  
12 half of the remaining 85% of licensing revenue. TPL's newly gained entitlement to a 15% flat fee  
13 of gross revenues from licensing of the entire MMP Portfolio should have eliminated all further  
14 claim for expenses of the commercialization of the MMP Portfolio. In fact, such expenses have  
15 not only continued to be claimed as offsets against the royalty revenues under the ComAg to  
16 which Plaintiff Moore is entitled, but have purportedly increased – and increased dramatically.

17 35. In or about December 2006, and thereafter, TPL systematically expanded its  
18 licensing arm, Defendant Alliacense. Between 2006 and 2008, TPL added three patent portfolios  
19 to the MMP Portfolio that it was previously licensing, and TPL then began marketing and  
20 commingling its marketing efforts, for all four portfolios.

21 36. Upon information and belief, revenues generated by the MMP Portfolio were  
22 diverted by TPL to support its business expansion into these other, non-related patent portfolios.  
23 Employees at Defendant Alliacense grew from approximately 20 employees (a number more than  
24 sufficient to serve the TPL/Defendant Alliacense MMP Portfolio licensing effort) to over 50  
25 employees. TPL leased additional, more elaborate and more expensive office space. TPL hired  
26 expensive business development personnel to seek additional portfolio opportunities (thus  
27 expanding TPL business into areas that would detract from and decrease the MMP Portfolio  
28 licensing effort). Upon information and belief, all or substantially all of such expenses were borne

1 by the MMP Portfolio and the revenues it continued to generate.

2       37. While TPL expanded its business into non-MMP portfolios, it increasingly  
3 departed from the realm of prudent and reasonable business expenses. Private jets and first-class  
4 travel, for Attorney Leckrone, Defendant Mac Leckrone, Defendant Davis and other TPL and  
5 Defendant Alliacense personnel, became the norm. TPL not only provided chauffeured limousine  
6 service for the use of Attorney Leckrone and others, but actually purchased such limousines at  
7 company expense (charged through to Plaintiff Moore). A San Diego financial analyst was hired,  
8 thus incurring additional unnecessary commute, room and board, and travel expenses. TPL  
9 retained an Executive Vice-President for Administration, a **woman** who lives in London, England  
10 and who, on information and belief, has and had a close personal relationship with Attorney  
11 Leckrone. Expensive video conferencing equipment was provided for her use, to permit her  
12 attendance, via videoconference, at TPL board and executive meetings. Attorney Leckrone made  
13 visits to this TPL employee in London - via first-class air travel or private jet – once or twice a  
14 month (upon information and belief, there was no TPL or Alliacense business in London).  
15 Substantial meal, entertainment and travel expenses were incurred and passed through to Plaintiff  
16 Moore, including without limitation, travel to Japan, Korea, France and throughout the United  
17 States.

18       38. In addition, Plaintiff Moore is informed and believes that TPL made excessive and  
19 exorbitant expenditures for legal fees, and charged Plaintiff Moore excessive and inappropriate  
20 amounts for such fees, in an excessive and unnecessary amount according to proof at trial. Upon  
21 information and belief, TPL and Attorney Leckrone made secret and undisclosed profits and  
22 returns by reason of such legal fees, again in an amount according to proof at trial.

23       39. The result of TPL and Attorney Leckrone's uncontrolled and unknown binge  
24 spending was the supposed creation of Project Expenses and other expenses at a level that  
25 purportedly precludes any royalty payments to Plaintiff Moore.

26       40. As TPL expanded the scope of Defendant Alliacense's licensing activities, its focus  
27 on the MMP Portfolio was lost. Marketing efforts became diffuse and disorganized; TPL engaged  
28 in cross-licensing and commingling of licenses between and among its patent portfolios,

1 permitting it to create licensing arrangements and to direct revenues as it saw fit; too often, upon  
2 information and belief, in the direction of technologies TPL owned or controlled, and away from  
3 the MMP Portfolio, to the detriment of Plaintiff Moore and of PTSC.

4 41. In or about 2005 and 2006, TPL ceased making regular royalty payments to  
5 Plaintiff Moore, while continuing its prior failure to provide the periodic operating reports of  
6 results and expenses.

7 42. Following dispute and disagreement between TPL and Plaintiff Moore concerning  
8 TPL's failure to make royalty payments to Plaintiff Moore pursuant to the ComAg, TPL and  
9 plaintiff Moore negotiated and agreed, on or about March 20, 2007, to a written "Amendment  
10 Number One To the CHM-TPL Commercialization Agreement" ("ComAg Amendment No.1").  
11 Plaintiff Moore was not represented by counsel during the negotiation of ComAg Amendment No.  
12 1. The only attorney providing nominal guidance to both parties in the negotiation of ComAg  
13 Amendment No. 1 was Roger Cook, Esq., whose firm represented TPL in patent infringement  
14 litigation and whose firm had been paid (and would continue to be paid) by TPL and subject to  
15 Attorney Leckrone's direction and approval, many millions of dollars in legal fees.

16 43. The material terms of ComAg Amendment No. 1 were, in pertinent part, as  
17 follows-

18 - TPL's right to charge Project Expenses before distribution to Plaintiff Moore was eliminated as  
19 of January 1, 2006 (ComAg Amendment No. 1, Sec. 1);

20 - Section 6 of Exhibit C to the ComAg was to be eliminated in its entirety (ComAg Amendment  
21 No. 1, Sec. 2.); in its place was a section devoted to description of TPL's development of certain  
22 Commercialization Activities (ComAg Amendment No. 1, Sec. 2);

23 - A new provision for payment to Plaintiff Moore provided as follows: "TPL shall use its best  
24 efforts to distribute, within 30 days of receipt, a minimum of Ten Percent (10%) of any gross  
25 proceeds (excluding the Fifteen Percent (15%) fee received pursuant to 6.1(a)(iv)(b) of the  
26 Operating Agreement entered into with Patriot Scientific Corporation and dated June 7, 2005 with  
27 respect to the MMP Portfolio)(Minimum Distribution). Such Minimum Distribution shall be paid  
28 Fifty-Five [Percent] (55%) to [Plaintiff Moore] and Forty-Five [Percent] (45%) to TPL.

1 The latter provision was intended by the parties to provide Plaintiff Moore with prompt payment –  
2 upon any receipt of MMP Portfolio licensing fees – of a portion of the royalty payment to which  
3 Plaintiff Moore was entitled under the ComAg.

4 44. ComAg Amendment No. 1 is and at all times been a separate and severable  
5 agreement from the ComAg.

6 45. Defendant TPL has at all pertinent times since March 20, 2007, been in breach of  
7 ComAg Amendment No. 1, in that Defendant TPL has failed at any time to pay to Plaintiff Moore  
8 his share of the Minimum Distribution specified in paragraph 3 of ComAg Amendment No. 1;  
9 instead, Defendant TPL and Attorney Leckrone offered to pay an advance on such payments to  
10 Moore, consisting of a payment to Plaintiff Moore of \$30,000.00 per month, including \$15,000.00  
11 per month to cover the Plaintiff Moore's anticipated mortgage payment on certain property  
12 purchased and developed by Plaintiff Moore. Defendant TPL made such payments for several  
13 months only; and then ceased making those or any other payments, without notice, leaving  
14 Plaintiff Moore with a substantial mortgage obligation and no revenues to make the mortgage  
15 payments assumed in reliance on Defendants' promise of payment.

16 46. Further, Defendant TPL has breached its obligation, in paragraph 2 of ComAg  
17 Amendment No. 1, carry out the "design, development and commercialization of Array-Processor  
18 Technology and other products based thereon as appear to be economically viable or otherwise  
19 desirable (Array Program)." Instead, after devoting an initial apparent effort to commercialize the  
20 Array Program, Defendant TPL without notice abruptly ended that commercialization effort in or  
21 about January 2009, terminating all employees of the entity devoted to commercialization except  
22 for a single individual.

23 47. Defendant TPL has breached, and has continually been in breach of its obligations  
24 under the ComAg, in that -  
25 - (a) Defendant TPL, having been granted a limited assignment of minority rights (a 45% share) to  
26 and in the licensed MMP technology (ComAg, p. 2, Sec. 1.2), in or about October 2003,  
27 wrongfully converted to its own possession and use all right, title and interest in the most valuable  
28 of the MMP Portfolio, failing at any time to advise or inform Plaintiff Moore of its actions in

1 effecting such conversion through filings with the United States Patent and Trademark Office  
2 (“PTO”). Plaintiff Moore was unaware of Defendant TPL’s wrongful appropriation of the most  
3 valuable patents in the MMP Portfolio until August 2008, when his review of PTO records  
4 revealed that Attorney Leckrone had filed assignment papers with the PTO assigning all rights to  
5 the most valuable patents of the MMP Portfolio to Attorney Leckrone’s company TPL;  
6 - (b) Defendant TPL has continually failed to make the 55% of Net Recovery payments due to  
7 Plaintiff Moore under paragraph 6 of the ComAg, (“6. Royalty, Par. 1”);  
8 - (c) Defendant TPL has continually failed to provide to Plaintiff Moore the quarterly operating  
9 statement and balance sheet called for in “6.Royalty, Par. 2”, leaving Plaintiff Moore unable to  
10 ascertain what if any licensing revenues were being realized by Defendant TPL and what Project  
11 Expenses and other expenses might be reasonably deducted from those revenues;  
12 - (d) In violation of its obligations under ComAg Sec 2, Defendant TPL has failed, since  
13 September 16, 2006, to exert reasonable efforts to “commercialize” the MMP technology, instead  
14 devoting substantial effort, at Plaintiff Moore’s expense and to his detriment, to the development  
15 and commercialization of other patented technologies either owned by Defendant TPL or as to  
16 which TPL had acquired licensing rights; in addition, upon information and belief, Defendant TPL  
17 has commingled its licensing efforts and licenses to third parties, assigning to the MMP  
18 technologies a disproportionately small share of total license revenues, all without Plaintiff  
19 Moore’s knowledge or consent;  
20 - (e) Defendant TPL has at no time consulted with Plaintiff Moore with regard to any decision  
21 “... to license, exchange, encumber, transfer, sell, affiliate, or settle any rights or claim with  
22 respect to the Licensed [MMP] Technology ...(ComAg Sec. 5.1); instead, Defendant TPL has  
23 unilaterally made all decisions concerning licensing, and has compounded its failure to consult in  
24 advance by failing, since September 26, 2006, to advise Plaintiff Moore as to any licenses  
25 Defendant TPL has in fact written or of any revenues it has realized by reason of such licenses;  
26 - (f) Despite provision for a security interest in the Licensed [MMP] Technology and the proceeds  
27 thereof (ComAg Sec. 7.3), Defendant TPL and Attorney Leckrone have at no time prepared or  
28 delivered up to Plaintiff Moore an executed UCC-1 that would afford Plaintiff Moore his

1 contractually mandated security interest in the MMP Technology.

2       48. Further, Defendant TPL's unchecked, unmonitored, unbudgeted and undisclosed  
3 expenses, and TPL's involvement with other portfolios, also created the basis, upon information  
4 and belief, for similar charges of excess expense, and no supposed profit, net recovery, revenue or  
5 return, for others with patent portfolios which Defendant TPL, Defendant Alliacense and/or  
6 Attorney Leckrone, were to commercialize.

7       49. In particular, Plaintiff Moore is informed and believes that

8 (a) Attorney Leckrone obtained the rights to the so-called "Chipscale" patent portfolio, through  
9 purchase of Chipscale, Inc., the entity that owned those rights. Upon information and belief, the  
10 purchase of Chipscale, Inc., was contracted for by Attorney Leckrone individually; with Attorney  
11 Leckrone obligating himself to pay an agreed-upon amount, over time, for his purchase of the  
12 corporation and its patent rights. Upon information and belief, on or shortly after the date that  
13 Attorney Leckrone closed on his purchase of Chipscale, Inc., he immediately licensed or otherwise  
14 transferred his newly acquired Chipscale portfolio rights to TPL, with TPL supposedly authorized,  
15 under the terms of this transfer, to deduct project expenses and other expenses, allowing for just  
16 the sort of excess expense and abuse that would permit a claim of nothing owed to the Chipscale  
17 seller (just as TPL and the other Defendants have here used such improper and excessive expenses  
18 to deny Plaintiff Moore his royalty payments due for licensing of the MMP Portfolio). Defendant  
19 TPL's manipulation of rights under the Chipscale portfolio have led to litigation by and between  
20 Defendants TPL and Attorney Leckrone, on the one hand, and the Chipscale portfolio seller, with  
21 that litigation presently pending before this Court and known as *Daniel Leckrone v. Phil Marcoux*,  
22 *et al.* (and related cross-action), No. 1-09-CV-159593. Plaintiff Moore requests judicial notice of  
23 the files, records and proceedings of the *Leckrone v Marcoux* action pending before this Court.

24 (b) upon information and belief, a related dispute exists between TPL and the defendants, on the  
25 one hand, and the so-called "Schott group" in Germany, concerning rights to the Chipscale  
26 portfolio in Europe. Upon information and belief, TPL and the defendants herein claim and  
27 contend that their expenses outstrip any revenues received in connection with the Chipscale  
28 portfolio in Europe, and that the Schott group is therefore entitled to no royalty or licensing

1 payments for that reason.

2 (c) Upon information and belief, TPL and the Defendants have made similar charges and claims of  
3 expenses in excess of revenues, to defeat or diminish the rights of the so-called "Thunderbird  
4 group" to payments in connection with licensing of the "FastLogic" portfolio.

5 (d) Upon information and belief, TPL and the Defendants have failed to honor their purchase  
6 agreement with the "OnSpec" company, in connection with TPL's purchase of its affiliated  
7 patents, including the "CoreFlash" portfolio.

8 50. In addition, an individual, Chet Brown, was on information and belief, an investor  
9 in TPL; Mr. Brown's agreement, on information and belief, provided for payments to him based  
10 upon a percentage of the gross of TPL revenues. Upon information and belief, Attorney Leckrone  
11 and TPL deny Mr. Brown's right to payment from gross revenues; again, following the pattern and  
12 practice applied to Plaintiff Moore and others by TPL and the Defendants, Attorney Leckrone is  
13 now claiming the right to deduct his uncontrolled, unmonitored and previously undisclosed  
14 expenses from amounts otherwise due to Mr. Brown. This dispute has produced yet another civil  
15 action before this Court, known as *Brown vs. Technology Properties Limited. LLC, et al.*, and  
16 assigned file no. 1-09-CV-159452 by the clerk of this Court. Plaintiff requests judicial notice of  
17 the files, records and proceedings of this pending *Brown v. TPL* action pending before this Court.

18 51. Defendant TPL has further breached the ComAg and ComAg Amendment No. 1 by  
19 failing to report its results and licensing activities to Plaintiff Moore, thus permitting TPL to avoid  
20 its responsibilities to pay the percentage of the gross (a 55% share of 10% of gross licensing  
21 revenues) mandated by ComAg Amendment No. 1, and the royalties due under the ComAg.

22 52. In addition, in or about April 2010, PTSC became aware that TPL, without notice  
23 or authorization, had commingled an MMP Portfolio license with other portfolios, including, upon  
24 information and belief, the "Chipscale" portfolio in which TPL by then had no rights, and other  
25 portfolios owned by TPL, and licensed the result to a major Silicon Valley electronics and cell  
26 phone firm. The major component, by any measure, of that license was a license of the MMP  
27 Portfolio. TPL and the Defendants, without notice or authorization, upon information and belief,  
28 elected to attribute only five percent (5%) of what was upon information and belief a multimillion-

1 dollar licensing fee to the MMP Portfolio. PTSC filed action against TPL and Defendant  
2 Alliacense for its deception. That action – *Patriot Scientific Corporation v. Technology Properties*  
3 *Limited LLC* – was assigned file no 1-10-CIV-169836 by the clerk of this Court, where it remains  
4 pending, with Plaintiff PTSC upon information and belief having obtained a temporary restraining  
5 order and preliminary injunction against TPL and Alliacense, barring their further licensing of the  
6 MMP Portfolio without express consent of the Plaintiff PTSC. Plaintiff Moore has received no  
7 notice from TPL of this license of the MMP portfolio, its result has not been reported to him, and  
8 he has not received the share of the Minimum Distribution due to him under ComAg Amendment  
9 No. 1. Plaintiff Moore requests judicial notice of the files, records and proceedings of the *Patriot*  
10 *Scientific Corporation v. Technology Properties Limited LLC* action.

11 **FIRST CAUSE OF ACTION**

12 **[Cancellation of Instrument (Fraud of Attorney Leckrone and TPL)**  
13 **– Against All Defendants]**

14 53. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
15 were fully set forth herein.

16 54. The ComAg and ComAg Amendment No. 1 are in existence; originals of both  
17 documents, upon information and belief, are in the possession of Defendant TPL or Attorney  
18 Leckrone.

19 55. Plaintiff Moore was, until August 2008, unaware that Defendant TPL, through  
20 Attorney Leckrone, had in October 2003 recorded a purported assignment of all right, title and  
21 interest in the most valuable of the patents underlying the MMP Portfolio, from Plaintiff Moore  
22 (and from the entity iTV that had earlier held an interest in two of those valuable patents), to  
23 Defendant TPL.

24 56. Plaintiff Moore has at no time agreed to assign, transfer or otherwise yield up all or  
25 any part of his rights to the MMP Portfolio as a whole, or to any specific patents, to Attorney  
26 Leckrone's company TPL. Had Plaintiff Moore known, at the time he executed the ComAg, that  
27 Defendant TPL and Attorney Leckrone thereby intended to deprive him of all right, title and  
28 interest in any of his MMP Portfolio patents, Plaintiff Moore would not have entered into the

1 ComAg, or to any of the subsequent amendments thereto.

2 57. Defendant TPL and Attorney Leckrone made the representation that the ComAg  
3 was a licensing agreement, and a licensing agreement alone, to Plaintiff Moore, with the intent of  
4 causing Plaintiff Moore to rely upon that representation. Such reliance by Plaintiff Moore, on a  
5 representation from his attorney who had just recently retrieved rights for him in two of the MMP  
6 Portfolio patents, was reasonable under the circumstances, and Defendant TPL and Attorney  
7 Leckrone's secret intent to deprive Plaintiff Moore of all ownership rights to the most valuable of  
8 his MMP Portfolio patents, were unknown to Plaintiff Moore and could not, in the exercise of  
9 reasonable diligence, have been known to him in or about October 2002, when Attorney Leckrone  
10 submitted the ComAg to Plaintiff Moore on a "take it or leave it" basis.

11 58. Defendants TPL and Leckrone had no intention, at the time they prepared and  
12 promulgated the ComAg, and procured Plaintiff Moore's signature on it, of carrying out its  
13 provisions and in particular, of reserving to Plaintiff Moore his right to own and control the  
14 patents that make up his MMP Portfolio.

15 59. Defendants' fraudulent conduct renders the ComAg and each and all of the  
16 Amendments thereto invalid, and subject to cancellation by this Court.

17 60. Attorney Leckrone and TPL have given Plaintiff Moore no quarterly reports or  
18 regular reports of licensing activities and expense, despite contractual and fiduciary obligations to  
19 do so; Defendant TPL has neither consulted with nor advised Plaintiff Moore of, any licenses of  
20 the MMP Portfolio that TPL (or Alliacense) has issued; TPL and Attorney Leckrone, through  
21 Alliacense, have entered into at least one commingled license of dubious worth and misallocated  
22 proceeds, as described in Paragraph 52 above and in the *Patriot Scientific Corporation v.*  
23 *Technology Properties Limited, LLC* litigation described in Paragraph 52 above. In light of such  
24 facts and circumstances, if the ComAg and its Amendments remain outstanding, Defendant TPL  
25 and Attorney Leckrone will continue to engage in licensing the MMP Portfolio to third parties  
26 without consultation, report of result, concern for proper allocation, and payment of royalties. In  
27 addition, upon information and belief, Defendant TPL is and has been experiencing losses and  
28 cash flow problems; it may in fact be insolvent, or nearly so. Even if Plaintiff Moore were to

1 obtain a judgment for damages against Defendant TPL, such damages would in all likelihood be  
2 uncollectible in substantial part due to the financial condition of Defendant TPL and the  
3 irresponsible behavior of Attorney Leckrone.

4 61. Plaintiff Moore is entitled to general and special damages, in an amount according  
5 to proof, for the unpaid license fees and royalties to which he is entitled, less deduction for  
6 legitimate expenses, if any, that Defendant TPL might be able to demonstrate.

7 62. As alleged above, the actions of Defendant TPL and Attorney Leckrone were made  
8 with the intent to defraud Plaintiff Moore into entering into the ComAg, and Plaintiff Moore is  
9 entitled to an award of punitive and exemplary damages against Attorney Leckrone and Defendant  
10 TPL, in an amount according to proof at trial.

11 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

12 **SECOND CAUSE OF ACTION**

13 **[Cancellation of Instrument (Mistake – Misrepresentations as to Content of Document by**  
14 **Fiduciaries Attorney Leckrone and TPL) – Against All Defendants]**

15 63. Plaintiff Moore repeats and realleges paragraphs 1 through 62 hereof as if the same  
16 were fully set forth herein.

17 64. The ComAg and ComAg Amendment No. 1 are in existence; originals of both  
18 documents, upon information and belief, are in the possession of Defendant TPL or Attorney  
19 Leckrone.

20 65. As alleged above, during 2002, there at all times existed an attorney-client  
21 relationship between, on the one hand, Attorney Leckrone and his company TPL, and on the other  
22 hand, Attorney Leckrone's client Plaintiff Moore.

23 66. During 2002, and at all times since then, Attorney Leckrone and TPL have had and  
24 maintained a close and confidential relationship with Plaintiff Moore,

25 67. At the time that Attorney Leckrone explained the terms of the ComAG he had  
26 drafted to his client Plaintiff Moore, Attorney Leckrone falsely represented that the document gave  
27 to Attorney Leckrone's company TPL only the right and authority to license Plaintiff Moore's  
28 MMP Portfolio. Instead, hidden in the text of an Exhibit B to the ComAg was a provision

1 assigning to TPL all right, title and interest to that percentage of the MMP Portfolio that  
2 corresponded with the percentage of TPL's assigned licensing revenues (45%).

3 68. In addition, in or about October 2003, after execution of the ComAg, Attorney  
4 Leckrone, without notice to Plaintiff Moore and without Plaintiff Moore's knowledge, assigned to  
5 his company TPL all right, title and interest to the most valuable of the MMP Portfolio (including  
6 without limitation the so-called 336, 584, 749 and 890 patents.

7 69. Plaintiff Moore was, until August 2008, unaware that Defendant TPL, through  
8 Attorney Leckrone, had in October 2003 recorded a purported assignment of all right, title and  
9 interest in the most valuable of MMP Portfolio patents.

10 70. Plaintiff Moore has at no time agreed to assign, transfer or otherwise yield up all or  
11 any part of his rights to the MMP Portfolio to Defendant TPL. Had Plaintiff Moore known, at the  
12 time he executed the ComAg, that Defendant TPL and Attorney Leckrone thereby intended to  
13 deprive him of any or all of his right, title and interest to the MMP Portfolio, Plaintiff Moore  
14 would not have entered into the ComAg, or to any of the subsequent amendments thereto.

15 71. Defendant TPL's and Attorney Leckrone's false representation to Plaintiff Moore  
16 that the ComAg and its exhibits constituted a licensing agreement, and a licensing agreement  
17 alone, was made in violation of such defendants' fiduciary obligations to Plaintiff Moore, who  
18 was at all times in a close and confidential relationship with Attorney Leckrone (Plaintiff Moore's  
19 counsel and attorney) and with TPL, Attorney Leckrone's company.

20 72. Plaintiff Moore's mistake in his understanding of what was being transferred in the  
21 ComAg (a mistake arising from the false and misleading summary of the ComAg by his  
22 fiduciary), and Plaintiff Moore's ignorance of Attorney Leckrone's intent to secure for himself and  
23 his company TPL the most valuable of the MMP Portfolio's patents, are grounds for cancellation  
24 of the ComAg and its subsequent amendments.

25 73. Defendants TPL and Leckrone had no intention, at the time they prepared and  
26 promulgated the ComAg, and procured Plaintiff Moore's signature on it, of carrying out its  
27 provisions and in particular, of reserving to Plaintiff Moore his right to own and control his MMP  
28 Portfolio.

74. On grounds of mistake, the ComAg and each and all of the Amendments thereto are invalid, and subject to cancellation by this Court.

75. Attorney Leckrone and TPL have given Plaintiff Moore no quarterly reports or regular reports of licensing activities and expense, despite contractual and fiduciary obligations to do so; Defendant TPL has neither consulted with nor advised Plaintiff Moore of, any licenses of the MMP Portfolio that TPL (or Alliacense) has issued; TPL and Attorney Leckrone, through Alliacense, have entered into at least one commingled license of dubious worth and misallocated proceeds, as described in Paragraph 52 above and in the *Patriot Scientific Corporation v. Technology Properties Limited, LLC* litigation described in Paragraph 52 above. In light of such facts and circumstances, if the ComAg and its Amendments remain outstanding, Defendant TPL and Attorney Leckrone will continue to engage in licensing the MMP Portfolio to third parties without consultation, report of result, concern for proper allocation, and payment of royalties. In addition, upon information and belief, Defendant TPL is and has been experiencing losses and cashflow problems; it may in fact be insolvent, or nearly so. Even if Plaintiff Moore were to obtain a judgment for damages against Defendant TPL, such damages would in all likelihood be uncollectible in substantial part due to the financial condition of Defendant TPL and the irresponsible behavior of Attorney Leckrone.

76. Plaintiff Moore is entitled to general and special damages, in an amount according to proof, for the unpaid license fees and royalties to which he is entitled, less deduction for legitimate expenses, if any, that Defendant TPL might be able to demonstrate.

77. As alleged above, the actions of Defendant TPL and Attorney Leckrone were made with the intent to defraud Plaintiff Moore into entering into the ComAg, and Plaintiff Moore is entitled to an award of exemplary and punitive damages against Defendant TPL and Attorney Leckrone, in an amount according to proof at trial.

WHEREFORE, Plaintiff Moore prays judgment as set forth below.

### THIRD CAUSE OF ACTION

**[For Rescission of ComAg -- Against Defendant TPL and Attorney Leckrone]**

78. Plaintiff Moore repeats and realleges paragraphs 1 through 77 hereof as if the same

1 were fully set forth herein

2 79. The attorney-client relationship between, on the one hand, Attorney Leckrone and  
3 his company TPL, and on the other hand, Plaintiff Moore, was of the highest fiduciary character.

4 80. In imposing the ComAg on his client, Attorney Leckrone and his company TPL  
5 assumed the burden of burden of establishing by clear and satisfactory evidence that the  
6 transaction was fair and equitable, and that Plaintiff Moore was fully informed as to all matters  
7 relative to the transaction.

8 81. Instead, the ComAg is the product of insufficient consideration from Attorney  
9 Leckrone and his company TPL, and undue influence of both on Plaintiff Moore.

10 82. As alleged above, Plaintiff Moore did not discover the true facts concerning  
11 Attorney Leckrone and TPL's conversion of the most valuable of the MMP Portfolio patents to  
12 TPL's purported ownership and use until August 2008. The fact of such conversion were  
13 discovered by Plaintiff Moore through his own investigation, and without disclosure by Attorney  
14 Leckrone or his company TPL, despite their obligation to keep Plaintiff Moore informed as to all  
15 matters relative to the transaction.

16 83. Plaintiff Moore has suffered substantial financial injury and loss, and will continue  
17 to suffer such injury, unless and until the ComAg and its subsequent amendments are rescinded.

18 84. Plaintiff Moore intends service of the summons and complaint in this action to  
19 constitute his notice of rescission of the ComAg and its subsequent amendments. Plaintiff Moore  
20 hereby offers to restore to Attorney Leckrone and TPL all consideration received by Plaintiff  
21 Moore, subject to offset of such amount in its entirety by the amounts found to be due and owing  
22 to Plaintiff Moore from Attorney Leckrone and TPL, all in amounts subject to accounting and  
23 proof at trial.

24 85. In performing the acts hereinbefore alleged, Attorney Leckrone and his company  
25 TPL intentionally misrepresented that the ComAg was a licensing agreement only, that ownership  
26 of the MMP Portfolio would remain with Plaintiff Moore, and that TPL would pay to Plaintiff  
27 Moore as a royalty his specified percentage of revenues (55%), less reasonable Project Expenses,  
28 all with the intent to induce Plaintiff Moore to enter into the ComAg to defendants' benefit; an

1 award of punitive damages against Attorney Leckrone and TPL is thereby justified.

2 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

3 **FOURTH CAUSE OF ACTION**

4 **[In the alternative to Causes of Action One, Two and Three:**  
5 **Against Defendant TPL and Attorney Leckrone, For Rescission of ComAg Amendment 1**  
6 **and Damages as a Promise Made Without Intent To Perform]**

7 86. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
8 were fully set forth herein.

9 87. At all times to and through the negotiation of ComAg Amendment No. 1,  
10 Defendant TPL and Attorney Leckrone were in a position of trust and authority with respect to  
11 Plaintiff Moore, having control over licensing activities authorized by the ComAg, having  
12 exclusive knowledge concerning the nature, scope and revenues of such licensing activities,  
13 having the duty to report the results of such licensing activities and having the duty to pay  
14 royalties to Plaintiff Moore based upon revenues received less Project Expenses incurred, both  
15 amounts known only to Defendant TPL and Attorney Leckrone.

16 88. TPL and Attorney Leckrone made no regular or periodic reports of their licensing  
17 activities to Plaintiff Moore, leaving him completely dependent upon their honest and faithful  
18 reporting of revenues received, and allowable expenses that might be offset against such revenues.

19 89. TPL and Attorney Leckrone ceased making payments to Plaintiff Moore months  
20 before March 2007.

21 90. In the negotiations leading up to the March 2007 ComAg Amendment No. 1,  
22 Defendants TPL and Leckrone promised Plaintiff Moore that, to ensure his receipt of some  
23 income from every license they were able to negotiate of Plaintiff Moore's MMP Portfolio, they  
24 would advance to Plaintiff Moore 55% (fifty-five percent) of 10% (ten percent) of the gross  
25 revenues from every such MMP license.

26 91. In addition, Plaintiff Moore had by that point invented the so-called "Array"  
27 Technology, and had obtained patents on that technology, which he wished to have developed to a  
28 point where it might be licensed or commercially exploited. Defendants TPL and Attorney  
Leckrone further promised that if Plaintiff Moore provided them with exclusive licensing rights to

1 Array Technology patents, they would utilize their expertise, and part of revenues otherwise  
2 payable to Plaintiff Moore under the existing ComAg, to develop the Array Technology to the  
3 point where it could be licensed and otherwise commercially exploited.

4 92. At the time defendants made such promises to Plaintiff Moore, they had no  
5 intention of performing them.

6 93. Defendants' promises were made by Defendants TPL and Leckrone with the intent  
7 to induce Plaintiff Moore to refrain from enforcing his rights to revenues under the ComAg, and to  
8 give up his rights to develop and exploit the Array Technology that he had invented.

9 94. Plaintiff Moore, at the time that defendants' promises were made and the ComAg  
10 Amendment No. 1 was negotiated and signed, was ignorant of defendants' secret intention not to  
11 perform and could not, in the exercise of reasonable diligence, have discovered defendants' secret  
12 intentions not to perform. In reasonable and justifiable reliance on defendants' promises, Plaintiff  
13 Moore agreed to ComAg Amendment No. 1. Had Plaintiff Moore known the true facts, he would  
14 not have taken such action, but would have relied upon his existing rights under the ComAg and  
15 taken steps to enforce those rights.

16 95. Defendants failed to abide by their promises. They have at no time paid to Plaintiff  
17 Moore any percentage of gross revenues, concealing the fact and amount of those revenues. They  
18 have provided no regular, periodic or other accounting to Plaintiff Moore of the licenses that TPL  
19 has written, or of the revenues TPL has received from those licenses. Further, defendants  
20 deliberately or recklessly hired employees and paid excessive and unwarranted expenses, some  
21 upon information and belief having nothing to do with development of Array Technology, charged  
22 Plaintiff Moore for those expenses, and then – unilaterally and without notice to Plaintiff Moore –  
23 terminated all effort to develop Array Technology in or about 2009.

24 96. But for defendants' wrongful disavowal of their promised actions and behavior,  
25 Plaintiff Moore would have realized substantial revenues and would by now be in a position to  
26 develop and exploit Array Technology, which defendants to the date hereof refuse to restore to  
27 Plaintiff Moore.

28 97. By reason of defendants' actions, Plaintiff Moore has been damaged in an amount

1 according to proof at trial, but reasonably believed to exceed \$20 million.

2 98. The aforementioned conduct of the defendants was an intentional  
3 misrepresentation, deceit or concealment of a material fact known to the defendants, with the  
4 intention on the part of the defendants of thereby depriving Plaintiff Moore of property or legal  
5 rights or otherwise causing injury, and was despicable conduct that subjected Plaintiff Moore to a  
6 cruel and unjust hardship in conscious disregard of his rights, so as to justify an award of  
7 exemplary and punitive damages.

8 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

9 **FIFTH CAUSE OF ACTION**

10 **[Conspiracy To Commit Fraud – Against All Named Defendants and DOES 1 – 10]**

11 99. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 and 87 through 98  
12 hereof as if the same were fully set forth herein.

13 100. In or about 2007, Defendants and each of them knowingly and willingly conspired  
14 and agreed among themselves to charge exorbitant, unreasonable and illegitimate fees and  
15 expenses to Plaintiff Moore under the ComAg, in amounts that they knew would preclude any  
16 payments of royalties to Plaintiff Moore.

17 101. As hereinbefore alleged, and to lull Plaintiff Moore into acceptance and inaction,  
18 Defendants suggested and thereafter negotiated the supposed “percentage of the gross” payment  
19 modification set out in ComAg Amendment 1, under which Plaintiff Moore was supposedly  
20 assured a payment of 55% of 10% of gross licensing revenues, without regard to the expenses  
21 Defendants had incurred and would continue to incur.

22 102. Defendants did the acts and things alleged herein pursuant to, and in furtherance of,  
23 the conspiracy and the above-alleged agreement.

24 103. ComAg Amendment No. 1 has been honored in its breach; no percentage of gross  
25 licensing revenues has ever been paid to Plaintiff Moore; no disclosure of gross licensing revenues  
26 has ever occurred.

27 104. Plaintiff Moore is informed and believes that the last known overt act in pursuance  
28 of the above-described conspiracy occurred in or about April 2010, when the license described in

1 Paragraph 52 hereof was issued, without notice to Plaintiff Moore, without disclosure, then or  
2 since then, to Plaintiff Moore as to the gross revenues received through such license, and to the  
3 financial injury of Plaintiff Moore and of PTSC, as described in Paragraph 52.

4 105. Plaintiff Moore, deprived of any reporting of gross license revenues, any notice of  
5 licenses negotiated or issued, and any payment of his ComAg Amendment No. 1-specified  
6 percentage of the gross, had no knowledge of Defendants' fraud until learning, from third party  
7 sources, of the issuance of the license described in Paragraph 52 above.

8 106. As a proximate result of the wrongful acts herein alleged, Plaintiff Moore has been  
9 generally damaged, in an amount according to proof.

10 107. As a proximate result of the wrongful acts herein alleged, Plaintiff Moore has been  
11 specially damaged in that he has not been paid the royalties due him under the ComAg, all in an  
12 amount according to proof, plus prejudgment interest thereon at the legal rate.

13 108. In doing the things alleged herein, Defendants acted fraudulently and willfully, and  
14 with the intent to cause injury to Plaintiff Moore, in conscious disregard of Plaintiff Moore's  
15 rights, thereby warranting an assessment of punitive damages in an amount according to proof  
16 appropriate to punish Defendants and deter others from engaging in similar misconduct.

17 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

## 18 SIXTH CAUSE OF ACTION

### 19 [Breach of Contract -- Against TPL and Defendant Alliacense]

20 109. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 hereof as if the same  
21 were fully set forth herein.

22 110. Plaintiff Moore has performed all conditions, covenants and promises required on  
23 his part under the ComAg and the amendments thereto.

24 111. As of September 27, 2006, and continuously since that date, TPL and Defendant  
25 Alliacense have been in breach of the ComAg for, among other things-

- 26 - failing to advise Plaintiff Moore of license revenues written;  
27 - failing to advise Plaintiff Moore of licensing revenues received;  
28 - failing to set-off only reasonable, necessary and disclosed expenses against license revenues

1 received, instead using the device of such improper and/or illegitimate expenses to increase the  
2 revenues to Defendants at the expense of royalties due to Plaintiff Moore;  
3 - failing to pay Plaintiff Moore royalties due him under the ComAg;  
4 - failing to pay Plaintiff Moore his specified percentage of gross revenues received under ComAg  
5 Amendment No. 1;  
6 - allowing the submission and recordation at the PTO of documents claiming and supposedly  
7 establishing assignee status and ownership rights in TPL of patents with substantial value that are  
8 and should remain a part of Plaintiff Moore's MMP Portfolio;  
9 - misallocating license proceeds in commingled patents, to decrease the amount of license revenue  
10 due for license of the MMP Portfolio, and increasing the amount of license revenue supposedly  
11 due for license of other patents owned, controlled or misappropriated by TPL.

12 112. As a result of the foregoing breaches of the ComAg and its amendments, Plaintiff  
13 has suffered general and special damages, in an amount according to proof.

14 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

15 **SEVENTH CAUSE OF ACTION**

16 **[For Constructive Trust and Accounting -- Against Defendant TPL and Attorney Leckrone]**

17 113. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
18 were set forth in full herein.

19 114. As alleged above, Plaintiff Moore holds an interest in unpaid license proceeds  
20 under the ComAg.

21 115. Defendants TPL and Attorney Leckrone have and hold, and have wrongfully  
22 converted to their own use, substantial license proceeds from licenses of the MMP Portfolio, in  
23 amounts that substantially exceed any right, claim or entitlement to such proceeds.

24 116. By virtue of such defendants' wrongful acts, they hold the converted funds, in an  
25 amount according to proof, in constructive trust for the benefit of Plaintiff Moore.

26 117. Plaintiff Moore has repeatedly requested and demanded the statements of licensing  
27 revenues and expenses that are his right.

28 118. Defendants have refused, and continue to refuse, to provide the requested

1 information concerning licensing revenues and expenses.

2 119. Plaintiff Moore does not know the exact amount of the royalties to which he is  
3 entitled, and an accounting is necessary to determine the amount of the royalties due to him, in  
4 that Plaintiff Moore remains ignorant of the licenses issued on his MMP Portfolio, the gross  
5 revenues received, the amounts paid to PTSC, the amounts received by TPL and Alliacense, and  
6 the legitimate expenses that TPL and Alliacense may be entitled to deduct in determining the  
7 ComAg royalties due to Plaintiff Moore.

8 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

9 **EIGHTH CAUSE OF ACTION**

10 **[Preliminary and Permanent Injunction -- Against All Defendants]**

11 120. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 hereof as if the same  
12 were set forth in full herein.

13 121. Plaintiff Moore has received no information concerning licenses written by TPL  
14 and Alliacense, despite repeated request and demand for such information.

15 122. Plaintiff Moore has received no royalty payments from TPL since July 2008;  
16 Plaintiff Moore has received no payment at all from TPL since November 2009.

17 123. TPL and Alliacense continue to write MMP Portfolio licenses; they wrote a  
18 commingled license, wrongfully diverting license revenue away from PTSC and Plaintiff Moore  
19 in April 2010; they have written a license to Dresser, Inc., with announcement made of such  
20 license not by TPL but by PTSC, on September 24, 2010; they have given no notice of such  
21 licenses to Plaintiff Moore, paid him none of the percentage of gross license revenues due to him  
22 under the ComAg, and paid him none of the royalties due to him under the ComAg.

23 124. Defendants' wrongful withholding of information and financial results, and refusal  
24 to pay licensing royalties or a percentage of the gross to Plaintiff Moore, unless enjoined and  
25 restrained by order of this Court, will cause great and irreparable injury to Plaintiff Moore in that  
26 (a) Plaintiff Moore's right, title and interest in his MMP Portfolio will be clouded or defeated by  
27 transfer, sale, or encumbrance, unless a prohibition against transfer is entered by this Court; and  
28 (b) in view of TPL and Alliacense's shaky financial condition, either or both may collapse

1 financially, leaving Plaintiff Moore unable to collect the money judgment that he will gain in this  
2 action.

3 125. Plaintiff has no adequate remedy at law for such injury.

4 WHEREFORE, Plaintiff Moore prays judgment as follows:

5 **On his First Cause of Action, as to all Defendants:**

6 1. That the ComAg and the Amendments thereto be declared void as fraudulently  
7 induced;

8 2. That Defendant TPL deliver the ComAg and the Amendments thereto to the Clerk of  
9 this Court for cancellation;

10 3. That Plaintiff Moore be awarded damages against Defendant TPL and Attorney  
11 Leckrone, in an amount according to proof at trial, plus interest thereon from the date that such  
12 damages came due to Plaintiff, at the rate of 7 percent per annum or such other rate as the Court  
13 may set;

14 4. For exemplary and punitive damages against Defendant TPL and Attorney Leckrone.

15 **On his Second Cause of Action, as to all Defendants:**

16 5. That the ComAg and the Amendments thereto be declared void as the result of  
17 mistake;

18 6. That Defendant TPL deliver the ComAg and the Amendments thereto to the Clerk of  
19 this Court for cancellation;

20 7. That Plaintiff Moore be awarded damages against Defendant TPL and Attorney  
21 Leckrone, in an amount according to proof at trial, plus interest thereon from the date that such  
22 damages came due to Plaintiff, at the rate of 7 percent per annum or such other rate as the Court  
23 may set;

24 8. For exemplary and punitive damages against Defendant TPL and Attorney Leckrone.

25 **On his Third Cause of Action, as to all Defendants:**

26 9. That this Court declare that the ComAg and the Amendments thereto have been  
27 rescinded;

28 10. That Attorney Leckrone and TPL be directed to pay to Plaintiff Moore 55% of the

1 license fees received for licenses of the MMP Portfolio written by TPL and/or Alliacense, after  
2 deduction of the reasonable, legitimate and appropriate expenses of such licensing activity;

3 11. That Plaintiff Moore be awarded punitive damages against Defendant TPL and  
4 Attorney Leckrone, in an amount according to proof at trial;

5 12. For interest at the legal rate on damages awarded.

6 **On his Fourth Cause of Action, as to Defendant TPL and Attorney Leckrone:**

7 13. That this Court declare that ComAg Amendment No. 1 has been rescinded;

8 14. That Plaintiff Moore restore to Defendant TPL and Attorney Leckrone all benefit  
9 received under ComAg Amendment No. 1, conditioned on Defendant TPL and Attorney Leckrone  
10 restoring to Plaintiff Moore their benefits received, including without limitation, the Array  
11 Technology, plus net damages found to be due and owing;

12 15. That Plaintiff Moore be awarded punitive damages against Defendant TPL and  
13 Attorney Leckrone, in an amount according to proof at trial.

14 **On his Fifth Cause of Action, as to all Defendants:**

15 16. For general damages according to proof;

16 17. For special damages according to proof, plus interest thereon at the legal rate;

17 18. For punitive and exemplary damages, in an amount according to proof at trial.

18 **On his Sixth Cause of Action, as to Defendant TPL and Attorney Leckrone:**

19 19. For general damages according to proof;

20 20. For special damages according to proof, plus interest thereon at the legal rate;

21 **On his Seventh Cause of Action, as to Defendant TPL and Attorney Leckrone:**

22 21. For funds converted and held by Defendant TPL and by Attorney Leckrone, in an  
23 amount according to proof;

24 22. For interest at the legal rate on the funds converted;

25 23. For an order that such defendants hold the converted funds in constructive trust for  
26 Plaintiff Moore;

27 24. For an order declaring Plaintiff Moore to be the legal owner of the converted funds;

28 25. For an order compelling defendants to convey the funds to Plaintiff Moore;

1 26. For an accounting of all monies found owing to Plaintiff Moore;

2 27. For damages in the amount of all monies found owing to Plaintiff Moore.

3 **On his Eighth Cause of Action, as to all defendants:**

4 28. For a preliminary injunction and a permanent injunction all enjoining defendants, and  
5 each of them, and their agents, servants, and employees, and all persons acting under, in concert  
6 with, or for them:

7 (a) From assigning, selling, encumbering or otherwise transferring the whole or any part of any or  
8 all of those patents known as the MMP Portfolio that are the subject of that certain agreement  
9 known as the "Commercialization Agreement Between Technology Properties Limited and  
10 Charles H. Moore," dated as of October 21, 2002 (the "ComAg"); and

11 (b) From issuing any license of the whole or any part of the MMP Portfolio without first  
12 disclosing the prospective terms of such license to Plaintiff Charles H. Moore and obtaining the  
13 consent of Plaintiff Moore to such license, which consent shall not be unreasonably withheld;

14 29. For damages according to proof.

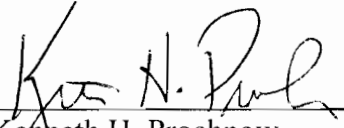
15 **On all Causes of Action:**

16 30. For costs of suit incurred in this action; and

17 31. For such other and further relief as the Court deems proper.

18 Dated: September 26, 2010

CHILES AND PROCHNOW, LLP

19  
20 By:   
21 Kenneth H. Prochnow  
22 Attorneys for Plaintiff Charles H. Moore  
23  
24  
25  
26  
27  
28

# EXHIBIT C

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FILED

2011 JUL 29 PM 3:00

David H. Yarnes, Clerk of the Superior Court  
County of Santa Clara, California

By:

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LLC, a Delaware limited liability company; DANIEL  
EDWIN LECKRONE, DANIEL MCNARY  
LECKRONE, and MICHAEL DAVIS

Attorneys for Defendant  
TECHNOLOGY PROPERTIES LIMITED LLC, a  
California limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

CHARLES H. MOORE,

Plaintiff,

v.

TECHNOLOGY PROPERTIES LIMITED  
LLC, a California limited liability  
company; ALLIACENSE LLC, a Delaware  
limited liability company; DANIEL  
EDWIN LECKRONE, an individual;  
DANIEL MCNARY LECKRONE, an  
individual; MICHAEL DAVIS, an  
individual; and Does 1 through 100,  
inclusive,

Defendants.

CASE NO. 1-10-CV-183613

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS' DEMURRER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

**Date:** December 6, 2011  
**Time:** 9:00 a.m.  
**Dept.:** 2  
**Judge:** Hon. Patricia M. Lucas

I.

**INTRODUCTION**

Defendants filed a demurrer to the Plaintiff Charles Moore's initial complaint on February 5, 2011. The hearing was set for the first available date of June 28, 2011. Approximately four days before the hearing date, **and more than four and one-half months after the demurrer was filed**, Plaintiff's counsel filed a first amended complaint. However, the first amended complaint suffers from the same deficiencies as the initial complaint. It does not allege any facts sufficient to state any claim against Defendants Daniel McNary Leckrone, Michael Davis or Alliacense, LLC, and fails to allege any facts sufficient to state a claim for injunctive relief against any defendant other than TPL. Accordingly, Defendants Daniel McNary Leckrone, Michael Davis or Alliacense, LLC hereby assert this demurrer as to each cause of action alleged against them in Moore's first amended complaint, and Defendant Daniel Edwin Leckrone asserts this demurrer as to the eighth cause of action alleged against him in Plaintiff's first amended complaint.

II.

**PLAINTIFF'S ALLEGATIONS**

Plaintiff's allegations focus on a purported attorney-client relationship between himself and Defendant Daniel Edwin Leckrone, and a contract and amendment ("Commercialization Agreement" and "Amendment") Plaintiff entered into with Defendant TPL. Specifically, Moore claims that during the purported attorney-client relationship with Daniel Edwin Leckrone, Mr. Leckrone drafted a contract between Moore and TPL pursuant to which TPL would commercialize a certain portfolio of patents ("MMP Portfolio") through licensing of these patents to third parties. [First Amended Complaint ("FAC"), ¶¶ 7-20.]

Although Moore does not attach as an exhibit to his first amended complaint a copy of either the Commercialization Agreement or its Amendment, Moore's allegations clearly establish that the Commercialization Agreement and Amendment are solely between himself and TPL. None of the other named Defendants are alleged to be parties to the contract. [E.g., FAC, ¶¶ 20 and 42.] In alleging some of the terms of the Commercialization Agreement and Amendment,

1 Moore identifies TPL as the only entity owing Moore any obligations under either agreement.  
2 [FAC, ¶¶ 31 and 43.] Further, Moore alleges numerous breaches of the Commercialization  
3 Agreement and Amendment, in each instance identifying TPL as the sole breaching party. [FAC,  
4 ¶¶ 32-42, 45-48, 51.]

5 Additionally, there are no **factual** allegations in the first amended complaint with respect  
6 to any wrongdoing by Defendants Daniel McNary Leckrone, Michael Davis or Alliacense. These  
7 defendants are mentioned in the complaint by name only in generalized, non-specific references.  
8 [E.g., FAC, ¶¶ 35-37, 40, 48, 52, 60, 75, 111, 123, 124.]

9 Based on the allegations set forth in the first amended complaint, Moore has alleged  
10 causes of action for cancellation of the Commercialization Agreement and Amendment against  
11 Defendants Daniel Edwin Leckrone, TPL and Alliacense, (first and second causes of action),  
12 rescission of either the Commercialization Agreement or its Amendment against Defendants TPL  
13 and Daniel Edwin Leckrone (third and fourth causes of action), conspiracy to commit fraud  
14 against all defendants (fifth cause of action), breach of contract against Defendants TPL and  
15 Alliacense (sixth cause of action), a constructive trust and accounting against Defendants TPL  
16 and Daniel Edwin Leckrone (seventh cause of action), and injunctive relief against all defendants  
17 (eighth cause of action).

18 **III.**

19 **LEGAL ARGUMENT**

20 **A. MOORE HAS FAILED TO ALLEGE FACTS SUFFICIENT TO STATE**  
21 **ANY CAUSE OF ACTION AGAINST DEFENDANTS DANIEL MCNARY**  
22 **LECKRONE, MICHAEL DAVIS OR ALLIACENSE**

23 **1. Moore Has Not Stated a Claim for Cancellation (First and Second Causes of**  
24 **Action) against Defendant Alliacense**

25 Moore's amended first and second causes of action are now asserted only against  
26 Defendants Daniel Edwin Leckrone, TPL and Alliacense, rather than all Defendants as in  
27 Plaintiff's initial complaint. However, Moore still has not alleged any contractual relationship  
28 with Alliacense sufficient to constitute a claim against it for cancellation. Not only is Alliacense  
not a party to the instrument which Moore seeks to cancel, Moore has not alleged any facts to

1 establish that it was sufficiently involved in any of the alleged acts on which the cancellation  
2 claims are based. [E.g., *Carroll v. Carroll* (1940) 16 Cal.2d 761, 770-771.] Moreover,  
3 Alliacense did not even exist at the time (October 2002) which Moore alleges the  
4 Commercialization Agreement was signed. [FAC, ¶ 21.]

5 Accordingly, because Moore has alleged no facts of involvement by Alliacense in the  
6 fraud or misrepresentations on which the cancellation claims are based, nor any other facts to  
7 allege a contractual relationship with Alliacense, this Demurrer should be sustained as to  
8 Defendant Alliacense with respect to Plaintiff's first and second causes of action.

9 **2. Moore Has Not Stated a Claim for "Conspiracy To Commit Fraud" (Fifth**  
10 **Cause of Action) as against Defendants Daniel McNary Leckrone, Michael**  
11 **Davis or Alliacense**

12 California law mandates that "every element of a cause of action for fraud must be alleged  
13 in full, factually and specifically." [*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186  
14 Cal.App.3<sup>rd</sup> 1324, 1331-1332.] Additionally, specific **facts** must be alleged establishing "how,  
15 when, where, to whom, and to what means the representations were tendered." [*Lazar v.*  
16 *Superior Court* (1996) 12 Cal.4<sup>th</sup> 631.] Further, the pleading requirements are stricter to state a  
17 fraud claim against a corporate entity, such as Alliacense. Plaintiff must "allege the names of the  
18 persons who made the allegedly fraudulent representations, their authority to speak, to whom they  
19 spoke, what they said or wrote, and when it was said or written." [*Id.* at 645, quoting, *Tarmann v.*  
20 *State Farm Mutual Automobile Insurance Company* (1991) 2 Cal.App.4<sup>th</sup> 153, 157.]

21 In addition to the strict pleading requirements to state sufficiently the underlying wrongful  
22 act on which Plaintiff's conspiracy claim is based, Plaintiff must also specifically allege the  
23 additional elements required under a conspiracy theory. "The elements of an action for civil  
24 conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff  
25 from an act or acts done in furtherance of the common design." [*Mox, Inc. v. Woods* (1927) 202  
26 Cal. 675, 677.] Thus, the allegations of the formation and operation of the conspiracy and the  
27 acts done in furtherance must be specifically alleged. The Court in *Kinney v. Postal Telegraph-*  
28 *Cable Co.* (1932) 123 Cal.App. 70, 75, held, "a complaint which contains nothing more than bare  
allegations that the defendants entered into a conspiracy to defraud plaintiff and committed

1 certain acts in furtherance thereof does not state a cause of action unless those acts are connected  
2 with a showing of facts which, if true, would support the charge that they were wrongful,  
3 inferences, generalities, presumptions and conclusions being insufficient.” (citations omitted)

4 In *117 Sales Corp. v. Olsen*, the court upheld a decision of the lower court to sustain a  
5 demurrer without leave to amend. With regard to the cause of action for conspiracy, the court  
6 held that “[t]he count is defective in that except for the allegation of the filing of the small claims  
7 action, the charges are pure conclusions, bare-faced generalities. No facts spell out the causal  
8 relationship between a charged conspiracy to file a small claims lawsuit and the unspecified,  
9 unjustified interference with business relations. The requisite improper objective of the  
10 ‘conspiracy’ remains undefined by any factual allegations.” [*117 Sales Corp. v. Olsen* (1978), 80  
11 Cal.App.3d 645, 650.]

12 In this case, Moore has undeniably failed to meet this strict pleading standard with respect  
13 to Defendants Daniel McNary Leckrone, Michael Davis or Alliacense. He claims that  
14 “Defendants and each of them knowingly and willingly conspired and agreed among themselves  
15 to charge exorbitant, unreasonable and illegitimate fees and expenses to Plaintiff Moore under the  
16 [Commercialization Agreement].” [FAC, ¶ 100.] However, the Commercialization Agreement  
17 and the Amendment are between Moore and TPL only, and Moore provides no facts to show that  
18 the other Defendants “conspired and agreed” to the fees charged by TPL. Similar to *117 Sales*  
19 *Corp.*, the first amended complaint offers no facts to spell out the causal relationship between the  
20 alleged benefit to the Defendants and the alleged fraud that was committed. No facts are  
21 provided to show how Defendants Daniel McNary Leckrone, Michael Davis or Alliacense did  
22 any act to charge “unreasonable and illegitimate fees and expenses” to Moore or even did  
23 anything to affect Moore’s contract with TPL. The first amended complaint alleges no facts to  
24 establish that those Defendants participated in any way in the negotiation of the Amendment. To  
25 the contrary, Moore’s claim that all Defendants suggested and negotiated the Amendment (FAC,  
26 ¶ 101) contradicts the previous claim that “TPL and plaintiff Moore negotiated and agreed, on or  
27 about March 20, 2007, to [the Amendment].” [FAC, ¶ 42.] Indeed, in March 2007, Alliacense  
28 did not even exist. Thus, Moore has failed to provide facts to show that the other Defendants

1 “suggested and thereafter negotiated” the Amendment.

2 Moore then claims that as a result of the Amendment, the Defendants diverted funds from  
3 him by claiming false expenses and fraudulently negotiating licenses. [FAC, ¶ 101.] However,  
4 Moore fails to show how the Defendants that were not parties to the original agreement or the  
5 Amendment, and, therefore, not in any contractual relationship with him, acted to wrongfully  
6 divert funds from the contract away from him. His claims are “pure conclusions” that amount to  
7 “nothing more than bare allegations” about any of the Defendants’ roles in the fraudulent  
8 negotiation of licenses.

9 Based on the foregoing, Moore has failed to allege specific facts as to each element of his  
10 fifth cause of action, and therefore, this demurrer should be sustained as to Defendants Daniel  
11 McNary Leckrone, Michael Davis and Alliacense.

12 **3. Moore Has Not Stated a Claim for Breach of Contract (Sixth Cause of Action)**  
13 **Against Defendant Alliacense**

14 Moore’s sixth cause of action is against Defendants TPL and Alliacense only, and it is  
15 based on a purported breach of the Commercialization Agreement by those two Defendants.  
16 [FAC, ¶¶ 110-112.] However, Moore has failed to allege any facts to establish a contractual  
17 relationship between himself and Defendant Alliacense, or that Alliacense assumed any  
18 obligation to Moore under the Commercialization Agreement. Moore alleges only the conclusion  
19 that as of September 27, 2006, a date before Alliacense came into existence, “TPL had assigned  
20 all licensing functions and duties for the MMP Portfolio to Alliacense.” [FAC, ¶ 111.]

21 To state a cause of action for breach of contract, Moore must allege “the existence of a  
22 contract, its terms which establish the obligation in issue, the occurrence of any conditions  
23 precedent to enforcement of the obligation, and the breach of that obligation.” [*FPI*  
24 *Development, Inc. v. Nakashima* (1991) 231 Cal.App.3<sup>rd</sup> 367, 383.] As discussed above, Moore  
25 has not alleged any of those elements with respect to Defendant Alliacense. Accordingly, this  
26 demurrer should be sustained with respect to Plaintiff’s sixth cause of action against Defendant  
27 Alliacense.  
28

1 **B. MOORE HAS NOT STATED A CLAIM FOR INJUNCTIVE RELIEF (EIGHTH**  
2 **CAUSE OF ACTION) AGAINST ANY DEFENDANT OTHER THAN TPL.**

3 Moore's eighth cause of action for injunctive relief, although directed against all  
4 Defendants, relies exclusively on the alleged "wrongful withholding of information and financial  
5 results, and refusal to pay licensing royalties or a percentage of the gross to Plaintiff Moore."  
6 [FAC, ¶¶ 121-124.] In essence, Moore seeks to enjoin all defendants from breaching the  
7 Commercialization Agreement and/or Amendment.

8 With respect to Defendants Daniel Edwin Leckrone, Daniel McNary Leckrone, Michael  
9 Davis and Alliacense, Plaintiff has not alleged any facts to establish that any of these Defendants  
10 are parties to the contracts Moore seeks to enforce, or that any of these Defendants have in any  
11 way assumed any obligations to Moore under the Commercialization Agreement or Amendment.  
12 Moreover, Moore has not sufficiently alleged any claim against Defendants Daniel McNary  
13 Leckrone, Michael Davis, and Alliacense. Accordingly, Moore's allegations against these  
14 defendants fail to meet basic pleading requirements, and therefore, this demurrer should be  
15 sustained as to Plaintiff's eighth cause of action as against all named defendants other than  
16 Defendant TPL.

17 **C. THIS DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND.**

18 Denial leave to amend is appropriate where a complaint alleges facts which do not entitle  
19 a plaintiff to relief on any legal theory. [See, e.g., *McDonald v. Superior Court* (1986) 180  
20 Cal.App.3d 297, 303.] This is particularly true where the plaintiff has already had an opportunity  
21 to amend in response to a demurrer. For example, in *Baldwin v. Daniels* (1955) 132 Cal.App.2d  
22 560, 563, the court held that leave to amend was properly denied where the "pleading was  
23 obviously defective and this defect had been clearly pointed out before the pleading was first  
24 amended as of course." [See also, *City of Stockton v. Superior Court* (2007) 42 Cal.4<sup>th</sup> 730, 747  
25 ("If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer,  
26 leave to amend is liberally allowed as a matter of fairness unless the complaint shows on its fact  
27 that it is incapable of amendment.") Moreover, Plaintiff has the burden to demonstrate the  
28 manner in which the complaint can be amended to state a valid cause of action and how the

1 amendment will change the legal effect of the complaint. [*Goodman v. Kennedy* (1976) 18  
2 Cal.3d 335, 349; *see also, Hendy v. Losse* (1991) 54 Cal.3d 723, 742.]

3 In our case, Plaintiff has filed an amended complaint in response to Defendants' demurrer  
4 to Plaintiff's initial complaint. Plaintiff had more than four months to consider and analyze  
5 Defendants' demurrer. However, Plaintiff has nevertheless failed to cure any of the pleading  
6 deficiencies identified in the demurrer. The first amended complaint still fails to allege sufficient  
7 facts to state any cause of action against Defendants Daniel McNary Leckrone, Michael Davis or  
8 Alliacense, or a claim for injunctive relief against Daniel Edwin Leckrone. Accordingly, this  
9 demurrer should be sustained without leave to amend.


10 IV.

11 CONCLUSION

12 Based on the foregoing, Plaintiff Moore has failed to state facts sufficient to allege any  
13 cause of action against Defendants Daniel McNary Leckrone, Michael Davis or Alliacense.  
14 Additionally, Moore has failed to allege sufficient facts to state a claim for injunctive relief  
15 against Defendant Daniel Edwin Leckrone. Accordingly, Defendants respectfully request this  
16 Court sustain this demurrer as to all causes of action alleged against Defendants Daniel McNary  
17 Leckrone, Michael Davis and Alliacense, and as to the eighth of cause of action as alleged  
18 against all Defendants other than TPL, without leave to amend.

19 Dated: July 29, 2011

ROPERS, MAJESKI, KOHN & BENTLEY

20  
21 By:   
22 J. MARK THACKER  
23 Attorneys for Defendants  
24 TECHNOLOGY PROPERTIES LIMITED  
25 LLC, a California limited liability  
26 company, ALLIACENSE LLC, a Delaware  
27 limited liability company; DANIEL  
28 EDWIN LECKRONE, DANIEL  
McNARY LECKRONE and MICHAEL  
DAVIS

# EXHIBIT D

MICHAEL J. IOANNOU (SBN 95208)  
J. MARK THACKER (SBN 157182)  
ROPER, MAJESKI, KOHN & BENTLEY  
50 West San Fernando Street, Suite 1400  
San Jose, CA 95113-2429  
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Attorneys for Defendant and Cross-Complainant  
TECHNOLOGY PROPERTIES LIMITED LLC and  
Defendants ALLIACENSE LLC; DANIEL EDWIN  
LECKRONE, DANIEL McNARY LECKRONE,  
and MICHAEL DAVIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

CHARLES H. MOORE,  
Plaintiff,

v.

TECHNOLOGY PROPERTIES  
LIMITED LLC, a California limited  
liability company; ALLIACENSE LLC,  
a Delaware limited liability company;  
DANIEL EDWIN LECKRONE, an  
individual; DANIEL McNARY  
LECKRONE, an individual, MICHAEL  
DAVIS, an individual; and Does 1  
through 100, inclusive,

Defendants.

TECHNOLOGY PROPERTIES  
LIMITED LLC, a California limited  
liability company,

Cross-Complainant,

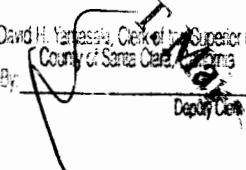
v.

CHARLES H. MOORE;  
GREENARRAYS, INC. and Roes 1  
through 20, inclusive,

Cross-Defendants.

**FILED**

2012 JAN 17 P 3:28

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara  
By:   
Deputy Clerk

CASE NO. 1-10-CV-183613

**ANSWER TO FIRST AMENDED  
COMPLAINT**

1 Defendant and Cross-Complainant TECHNOLOGY PROPERTIES LIMITED LLC and  
2 Defendants ALLIACENSE LLC; DANIEL EDWIN LECKRONE, DANIEL McNARY  
3 LECKRONE, and MICHAEL DAVIS, in answer to the unverified First Amended Complaint  
4 herein, herewith deny each and every, all and singular, the allegations of said unverified First  
5 Amended Complaint, and in this connection defendants deny that the plaintiff has been injured or  
6 damaged in any of the sums mentioned in said First Amended Complaint, or in any sum, or at all  
7 as the result of any act or omission of these answering defendants.

8 Further, and in support of each affirmative defense alleged in this answer, defendants  
9 incorporate each and every allegation stated in the Cross-Complaint on file herein by and on  
10 behalf of TECHNOLOGY PROPERTIES LIMITED LLC, as though fully set forth herein.

11 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
12 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
13 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
14 said complaint fails to state facts sufficient to constitute a cause of action against any of these  
15 answering defendants.

16 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
17 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
18 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
19 said First Amended Complaint is barred by the Doctrine of Estoppel.

20 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
21 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
22 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
23 said First Amended Complaint is barred by the Doctrine of Laches.

24 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
25 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
26 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
27 said First Amended Complaint is barred by the Doctrine of Unclean Hands.

28 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST

1 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
2 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
3 plaintiff has waived and is estopped and barred from alleging the matters set forth in the First  
4 Amended Complaint .

5 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
6 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
7 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
8 said First Amended Complaint is barred by the Statute of Frauds.

9 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
10 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
11 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
12 all times and places mentioned in the First Amended Complaint herein, plaintiff failed to perform  
13 certain conditions precedent to the duty of defendants. These conditions precedent were imposed  
14 upon the plaintiff by contract. The non-performance of said conditions excused defendants'  
15 obligations under the contract and has given the defendants the right of disaffirmance, rescission  
16 and release; plaintiff is therefore barred from recovery herein.

17 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
18 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
19 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
20 all times mentioned in the First Amended Complaint, plaintiff was in material default of and  
21 failed to perform obligations that were conditions precedent to and/or concurrent obligations with  
22 defendants' obligations herein. Further, plaintiff's default and failure to perform said obligations  
23 materially affects defendants' performance and/or duty to perform under the agreement alleged in  
24 the First Amended Complaint. Plaintiff is therefore barred from recovery under the First  
25 Amended Complaint.

26 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
27 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
28 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that his

1 or its conduct was justified and/or privileged under the circumstances.

2 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
3 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
4 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
5 all times and places mentioned in the First Amended Complaint herein, plaintiff failed to mitigate  
6 the amount of his damages. The damages claimed by plaintiff could have been mitigated by due  
7 diligence on his part or by one acting under similar circumstances. The plaintiff's failure to  
8 mitigate is a bar to his recovery under the First Amended Complaint.

9 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
10 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
11 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
12 the alleged causes of action set forth in the First Amended Complaint are, and each of them is,  
13 barred by the applicable provisions of the Code of Civil Procedure of the State of California,  
14 including, but not limited to, sections 335.1, 337, 338, 339, 340, and 343.

15 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
16 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
17 ACTION CONTAINED THEREIN, these answering defendants, and each of them, incorporate  
18 each and every allegation of the Cross-Complaint filed herein for cross-complainant  
19 TECHNOLOGY PROPERTIES LIMITED LLC against cross-defendant Charles H. Moore, et al.,  
20 as a set-off against any damages to plaintiff by defendants pursuant to this action.

21 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
22 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
23 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
24 any alleged representations made by defendants which formed the basis of plaintiff's First  
25 Amended Complaint herein, were true and honest at the time made. Said representations were  
26 made, if any there were, without knowledge of any falsity, and were not made with the intent to  
27 deceive the plaintiff. Plaintiff is therefore barred from recovery herein.

28 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST

1 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
2 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
3 information and belief that plaintiff cannot assert any of the contractual claims set forth in his  
4 First Amended Complaint because plaintiff prevented performance of such contract or contracts.

5 AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
6 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
7 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
8 information and belief that plaintiff cannot assert any of the contractual claims contained in his  
9 First Amended Complaint because plaintiff himself materially breached said contract or contracts.

10 AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
11 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
12 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
13 information and belief that the sole and proximate cause of the incident complained of by plaintiff  
14 in his First Amended Complaint was due to the act and/or omissions of persons and entities other  
15 than these answering defendants.

16 AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
17 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
18 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
19 there was a failure of consideration for the alleged agreement plaintiff seeks to enforce, caused by  
20 plaintiff, and that said failure of consideration bars plaintiff's rights to relief.

21 AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
22 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
23 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
24 enforcement of the agreement alleged in plaintiff's First Amended Complaint would work a  
25 forfeiture, and that the alleged agreement should not therefore be enforced in equity.

26 AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
27 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
28 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that

1 plaintiff and defendants entered into a written contract, and plaintiff has failed to perform  
2 pursuant to the terms and conditions of that contract, thereby depriving defendants of the benefit  
3 of the bargain.

4 AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
5 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
6 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
7 plaintiff's First Amended Complaint, to the extent that it seeks punitive or exemplary damages  
8 pursuant to section 3294 of the Civil Code, violates defendants' rights to protection from  
9 "excessive fines" as provided in the Eighth Amendment of the United States Constitution and  
10 Article I, Section 17, of the Constitution of the State of California, and violates defendants' rights  
11 to substantive due process as provided in the Fifth and Fourteenth Amendments of the United  
12 States Constitution and the Constitution of the State of California, and therefore fails to state a  
13 cause of action supporting the punitive or exemplary damages claimed.

14 AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
15 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
16 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
17 plaintiff should be denied recovery under the First Amended Complaint, and each cause of action  
18 thereof, because plaintiff's conduct was manifestly unreasonable.

19 AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
20 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
21 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
22 their conduct was not the cause in fact or the proximate cause of any of the losses alleged by  
23 plaintiff.

24 AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
25 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
26 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
27 all times and places mentioned in the First Amended-Complaint herein, plaintiff by his past  
28 conduct, past declarations, past arguments, deeds and judgments, acted with the intent to

1 deliberately lead the defendants into a position of helplessness. Said defendants believed the  
2 representations of plaintiff and acted upon such belief to the detriment of defendants. To permit  
3 plaintiff to prevail would work as injustice and therefore these answering defendants ask the  
4 Court to protect each of them in equity by decreeing that plaintiff has waived his rights, if any.  
5 The conduct of plaintiff acts to bar by estoppel his right to complain at the present time.

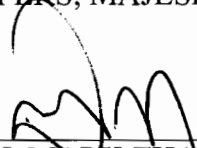
6 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
7 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
8 ACTION CONTAINED THEREIN, these answering defendants, and each of them, presently has  
9 insufficient knowledge and information to form a belief as to whether additional defenses may be  
10 available, and therefore reserves the right to assert any and all additional defenses in the event  
11 discovery and investigation indicate such defenses may be appropriate.

12 WHEREFORE, these answering defendants, and each of them, pray for judgment as  
13 follows:

- 14 1. That plaintiff take nothing by his First Amended Complaint;
- 15 2. For costs of suit incurred herein; and
- 16 3. For such other and further relief as the Court deems proper.

17 Dated: January 17, 2012

ROPERS, MAJESKI, KOHN & BENTLEY

18  
19 By:  For:  
20 J. MARK THACKER  
21 Attorneys for Defendant and Cross-  
22 Complainant TECHNOLOGY  
23 PROPERTIES LIMITED LLC and  
24 Defendants ALLIACENSE LLC; DANIEL  
25 EDWIN LECKRONE, DANIEL  
26 MCNARY LECKRONE, and MICHAEL  
27 DAVIS  
28

CASE NAME: Moore v. Technology Properties Limited, LLC, et al.

ACTION NO.: 1-10-CV-183613, Santa Clara County Superior Court

FILED

PROOF OF SERVICE 2012 JAN 17 P 3: 28

METHOD OF SERVICE

☒ First Class Mail

☐ Facsimile

☐ Overnight Delivery

☐ E-Mail/Electronic Delivery

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara, California  
By [Signature] Messenger Service  
Deputy Clerk

1. At the time of service I was over 18 years of age and not a party to this action.
2. My business address is 50 West San Fernando Street, Suite 1400, San Jose, County of Santa Clara, CA 95113-2429.
3. On January 17, 2012 I served the following documents:

ANSWER TO FIRST AMENDED COMPLAINT

4. I served the documents on the persons at the address below (along with their fax numbers and/or email addresses if service was by fax or email):

Kenneth H. Prochnow, Esq.  
Chiles & Prochnow, LLP  
Stanford Financial Square  
2600 El Camino Real, Suite 412  
Palo Alto, CA 94306-1719

Telephone: (650) 812-0400  
Facsimile: (650) 812-0404  
kprochnow@chilesprolaw.com

Attorneys for Plaintiff  
Charles H. Moore

5. I served the documents by the following means:

a. ☒ By United States mail: I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses specified in item 4 and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at the address listed in Paragraph 2 above.

b. ☐ By overnight delivery: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

1 c. ☐ By messenger: I served the documents by placing them in an envelope or package  
2 addressed to the persons at the addresses listed in item 4 and providing them to a messenger for  
3 service. (Separate declaration of personal service to be provided by the messenger.)

4 d. ☐ By fax transmission: Based on an agreement between the parties and in  
5 conformance with Rule 2.306, and/or as a courtesy, I faxed the documents to the persons at the  
6 fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the  
7 record of the fax transmission is attached.

8 e. ☐ By email or electronic transmission: Based on an agreement between the parties  
9 and/or as a courtesy, I sent the documents to the persons at the email addresses listed in item 4. I  
10 did not receive, within a reasonable time after the transmission, any electronic message or other  
11 indication that the transmission was unsuccessful.

12 I declare under penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct.

14 Date: January 17, 2012

15 Nancy Batchelder  
16 Type Name

17 Nancy Batchelder  
18 Signature

# EXHIBIT E

# U.S. International Trade Commission

*Evaluation of Pre-Filing and Pre-Institution of Section 337 Investigations*



**OIG-ER-11-13**

**September 12, 2011**



Office of Inspector General

*The U.S. International Trade Commission is an independent, nonpartisan, quasi-judicial federal agency that provides trade expertise to both the legislative and executive branches of government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement. USITC analysts and economists investigate and publish reports on U.S. industries and the global trends that affect them. The agency also maintains and publishes the Harmonized Tariff Schedule of the United States.*

*Commissioners*

*Deanna Tanner Okun, Chairman*

*Irving A. Williamson, Vice Chairman*

*Charlotte R. Lane*

*Daniel R. Pearson*

*Shara L. Aranoff*

*Dean A. Pinkert*

OFFICE OF INSPECTOR GENERAL



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## UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, DC 20436

September 12, 2011

OIG-JJ-013

Chairman Okun:

This memorandum transmits the Office of Inspector General's final report, *Evaluation of Pre-Filing and Pre-Institution of Section 337 Investigations*, *OIG-ER-11-013*. A copy of your comments will be included, in their entirety, as an appendix to the final report. In finalizing the report, we analyzed management's comments on our draft report and have included those comments in their entirety as Appendix C.

This evaluation focused on the processes that take place prior to and up until a Section 337 investigation is instituted by the Commission. Specifically, the evaluation assessed the value of the pre-filing phase, where draft complaints are reviewed by the Commission before being filed. The evaluation also examined the pre-institution process where a complaint, upon being formally filed with the Commission, is checked for compliance with the rules, and a recommendation on whether an investigation should be instituted is made. This final report contains issues for the Commission to consider as they continue to review and refine the 337 investigations process.

Thank you for the courtesies extended to the evaluators during this evaluation.

Philip M. Heneghan  
Inspector General



U.S. International Trade Commission  
Evaluation Report

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# U.S. International Trade Commission

## Evaluation Report

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# U.S. International Trade Commission

## Evaluation Report

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### Results of Evaluation

Section 337 of the Tariff Act of 1930, as amended, authorizes the U.S. International Trade Commission to investigate alleged unfair methods of competition and unfair acts in the importation and sale of articles in the United States. Prior to filing a complaint alleging a violation of Section 337, complainants have the option to have their draft complaint informally reviewed during the pre-filing phase. Once filed with the Commission, the complaint is assessed for compliance with the Commission's rules during the pre-institution phase. The Commissioners then vote on whether to institute an investigation.

The purpose of this evaluation was to answer the question:

Are the pre-filing and pre-institution processes for Section 337 investigations an efficient use of Commission resources?

Yes. Both the pre-filing and pre-institution processes are an efficient use of Commission resources. Given the function of these processes, discussed in detail below, and their associated costs, neither process is inefficient. We evaluated the staff costs associated with each process and determined that each draft complaint review costs the Commission approximately \$900 and the preparation of the Institution Memorandum, including reviewing the complaint for compliance with the rules and preparing the Action Jacket, costs approximately \$1200 (see Appendix A).

Through a separate initiative, the Commission has revised how the agency participates in various aspects of Section 337 investigations. The pre-filing and pre-institution processes are outside the scope of these changes. As the Commission periodically evaluates the efficacy of the new approach, issues for consideration have been flagged in both the pre-filing and pre-institution process that should also be taken into account.

# U.S. International Trade Commission

## Evaluation Report

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### *Pre-Filing*

#### **Description**

The pre-filing process is an informal practice whereby the Office of Unfair Import Investigations (OUII) reviews a draft complaint prior to it being filed with the Commission. The OUII estimates that 95% of complainants partake in this optional process. Complainant's counsel, one or two OUII staff and, in some cases, the complainants themselves, attend the draft review meetings. The OUII's Director or Supervisory Attorneys normally conduct the meeting, which takes anywhere from 4 to 8 hours including preparation time. The OUII staff attempt to meet with complainants approximately seven to ten days after receiving the draft complaint.

Due to the sensitive nature of the information contained in the complaint, the process is conducted entirely off the record. The comments provided to outside counsel are not recorded and the draft complaint is shredded after the meeting. At the start of the meeting, the OUII staff are instructed to recite a verbal disclaimer stating that they do not attempt to advise how the case will be decided and that they do not provide an assessment of the merits of the case. They also indicate that they could take a position opposed to the complainant if they become a party to the case.

The majority of the draft complaint review is spent discussing the substance of the complaint, particularly the domestic industry allegations, evidence of importation, and infringement materials. The meeting also includes a discussion of recent commission precedent during which relevant case law that may have been overlooked by counsel is flagged. The OUII makes suggestions as to what aspects of the complaint need to be enhanced and what needs to be rephrased or shortened. The OUII will also review and comment on resubmitted drafts that embody their suggested edits if complainants so desire. If outside counsel is filing a complaint at the Commission for the first time, Section 337 procedures and remedies which make the Commission distinct from district court are also outlined.

#### **Purpose**

Through the pre-filing process, the OUII is alerted to incoming complaints early on which provides an opportunity to spot issues that will make the pre-institution process less arduous for both the Commission and external parties. The OUII maintains that on occasion, complainants have decided to name fewer respondents or claim fewer patents. While it is difficult to precisely attribute this to the draft complaint review, outside counsel indicate that the ability to bring their clients to these meetings, allowing them to hear the OUII's comments directly, can result in their willingness to narrow the

# U.S. International Trade Commission

## Evaluation Report

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complaint. This, in turn, conserves Commission resources by simplifying the actual investigation.

The draft complaint reviews are intended to avoid the need for extensive supplementation of complaints during the deadline driven pre-institution period, although some form of supplementation during the pre-institution phase is almost always requested. Nonetheless, outside counsel is made aware of the supplementation that will be required during the pre-institution phase, lessening their burden. Outside counsel assert that the OUII's suggestions given during the pre-filing consultation are usually followed unless counsel perceives there to be strategic reasons for not doing so. The pre-filing process is also an opportunity for first-time filers at the Commission to meet with staff, obtain practice pointers specific to Section 337 investigations, and gain a solid understanding of the process, although this is not the only opportunity to do so. Both the OUII and the Trade Remedy Assistance Office regularly field calls about the Section 337 procedures and whether the Commission is an appropriate venue for their complaint.

The relatively short period of time in which institution must occur, combined with the Commission's fact pleading requirements, makes the detection of glaring insufficiencies before the complaint is formally filed highly useful. If extensive supplementation were required during the pre-institution phase, the complainant would be under significant pressure to produce the necessary materials, which could result in a request for an extension of the institution period. The OUII maintains that the rapid turnaround time required during pre-institution would be difficult to adhere to had they not conducted the pre-filing draft review.<sup>1</sup>

### Issues

#### *1. Does the pre-filing process add significant value for experienced ITC practitioners?*

Both the OUII and outside counsel view this process as akin to having a second pair of eyes review their complaint. Outside counsel see this as an opportunity to vet their arguments before the Commission in an informal environment. The process has been described as a chance to test both novel and weak legal arguments and gauge the OUII's response. In light of the multiplicity of sources which provide guidance for drafting a complaint, whether the Commission should allocate staff time to serve as the proofreader and sounding board for complainants must be questioned.

---

<sup>1</sup> The thirty-day deadline is not mandated by statute. The statute merely states the Commission shall conclude an investigation and make its determination at the earliest practicable time. 19 U.S.C. § 1337(b)(1) (2004). The Commission has interpreted this to mean institution must occur within thirty days, which has been codified in the Code of Federal Regulations, but can be changed upon the initiative of the Commission. 19 C.F.R. § 210.10(a)(1).

# U.S. International Trade Commission

## Evaluation Report

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Detailed requirements for the form and content of Section 337 complaints are set forth in 19 C.F.R. §§ 210.4, 210.8 and 210.12. Thomson West also publishes a step-by-step manual on how to bring Section 337 actions before the Commission that is regularly updated and discusses the relevant rules and case law in great detail.<sup>2</sup> Furthermore, public versions of properly filed complaints are available on EDIS and complainants are encouraged to find a complaint corresponding to the technology which is the subject of their allegations and use it as a template. Finally, the Commission website contains a list of “FAQ’s” which contain useful information on initiating a Section 337 investigation.

While the pre-filing process is beneficial to first time filers, statistics show that the majority of the cases are brought by counsel from firms with significant ITC experience. Of the draft complaint reviews conducted from Fiscal Year 2010 to Fiscal Year 2011 (as of June 24, 2011), 74 of 113 complainants that met with the OUII were represented by counsel that had represented at least one other complainant during that period alone. This number does not capture the representation of respondents during this period, which is largely done by the same cluster of firms. *Corporate Counsel* identified the “Top ITC Firms” (see Appendix B), which it defines as those that represented clients in at least four cases during Calendar Year 2010.<sup>3</sup> The list identifies seventeen firms which took part, either as counsel to the complainant or respondent, in the overwhelming majority of the 56 investigations that occurred during Calendar Year 2010.

### ***2. Is the Trade Remedy Assistance Office the more appropriate forum for pre-filing assistance for inexperienced filers?***

The pre-filing phase is not required by statute or Commission rules. Section 339 of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, required that the Trade Remedy Assistance Office be created to provide information to the public concerning remedies and benefits available under the trade laws, and procedural information on obtaining such remedies.<sup>4</sup> The office was also required to provide technical assistance to eligible small businesses to enable them to prepare and file non-frivolous complaints.<sup>5</sup> As a result, the Commission created the Trade Remedy Assistance Center within the OUII. At the time, the OUII was named the Unfair Import Investigations Division and was a part of the Office of Investigations. With the 1984 Act, the office was cleaved from the Office of Investigations and was given its current name, the Office of Unfair Import Investigations. In response to the amendments of Section 339 of the 1930 Act by the Omnibus Trade and Competitiveness Act of 1988, which explicitly required that the trade remedy assistance functions be carried out by a “separate office,” the Commission dissolved the Trade Remedy Assistance Center within the OUII and created the Trade Remedy Assistance Office.<sup>6</sup>

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<sup>2</sup> Donald K. Duvall et al., *Unfair Competition and the ITC* (2008).

<sup>3</sup> Andrew Goldberg, *ITC Survey 2010: The Slugfest Continues*, *Corporate Counsel* (June 21, 2011), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202496549175&rss=cc#>.

<sup>4</sup> Pub. L. No. 98-573, § 221, 90 Stat. 2989 (1984).

<sup>5</sup> *Id.*

<sup>6</sup> Pub. L. No. 100-418, § 1614, 102 Stat. 110 (1988); USITC Admin. Order No. 88-14 (Nov. 8, 1988).

# U.S. International Trade Commission

## Evaluation Report

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The implications of this are two-fold. First, Congress contemplated providing technical and legal assistance to complainants bringing cases before the ITC and specifically outlined who should be eligible for such assistance. The services provided by the Trade Remedy Assistance Office were meant to be provided to eligible small businesses as well as other interested parties who might need assistance or find it challenging to seek private assistance.<sup>7</sup> Complainants who are able to seek representation from highly sophisticated practitioners were likely not intended to qualify for assistance from the Commission.

Second, upon considering which office should be charged with providing such assistance, Congress specifically indicated that it should be done by a separate office, despite the fact that the OUII was in place at the time and presumably a viable candidate for the task. Arguably, if counsel that lacks ITC experience needs assistance in putting together their complaint, the Trade Remedy Assistance Office would be a more appropriate venue from which to seek it. With respect to complainants that are not eligible small businesses, the statute says that the Trade Remedy Assistance Office shall provide assistance and advice concerning the petition and application procedures.<sup>8</sup> The legislative history counsels against a narrow reading of this, stating that “assistance would be provided as a priority to eligible small business but also, as appropriate, to other interested parties and petitioners who might need the assistance of the Office or find it very burdensome to seek private assistance and advice.”<sup>9</sup> With respect to first time filers, the assistance provided during the pre-filing process could conceivably fall within this scope.

### ***3. Does the current organizational structure lend itself to a potential conflict of interest?***

Although some note that the pre-filing process is an excellent service provided by the Commission, others indicate that it adds little actual value but that they continue to attend regularly as a courtesy to the OUII. Because the OUII can become a party to the case, outside counsel may be reluctant not to participate in the pre-filing process as a precautionary measure so as to not develop negative rapport with staff that will then be involved in the adjudication of their case. While these concerns are likely unfounded, as the OUII is known to conduct these meetings and their interactions with counsel with the utmost professionalism, these perceptions nonetheless exist.

In fact, the legislative history surrounding the creation of the Trade Remedy Assistance Office seemed to anticipate and seek to avert this exact problem. The justification for establishing the Trade Remedy Assistance Office as a separate office was to “ensure its independence within the ITC so as to eliminate conflicts of interest.”<sup>10</sup> Presumably this meant that Congress did not envision that the office providing technical or legal advice to

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<sup>7</sup> H.R. Rep. No. 100-40, pt. 1, at 172 (1987).

<sup>8</sup> 19 U.S.C. § 1339(a) (2004).

<sup>9</sup> H.R. Rep. No. 100-40, pt. 1, at 172 (1987).

<sup>10</sup> *Id.*

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complainants would be the same office from which individuals would later become a party to the adjudication. Given the OUII's role in advising the Commission on institution and then subsequently becoming a party to the adjudication, their role in providing feedback to outside counsel is somewhat peculiar.

### *Pre-Institution*

#### **Description**

Upon the filing of a complaint, the Commission must decide whether an investigation should be instituted within thirty days.<sup>11</sup> Since the Federal Circuit has interpreted 19 U.S.C. § 1337(b)(1) to mean that the Commission must investigate alleged violations of Section 337,<sup>12</sup> institution of an investigation turns on whether the complaint sufficiently complies with the relevant rules set forth in the Code of Federal Regulations.<sup>13</sup> Compliance with the rules, in addition to sufficiency of the complaint and the need for supplementation, is primarily determined by the OUII. An Institution Memorandum is drafted recommending whether an investigation should be instituted and the Commissioners subsequently vote on it.

The Federal Circuit's decision in *Amgen* set a relatively low standard for institution of Section 337 investigations. Once a complaint is filed, absent clear failure to follow the Commission's pleading requirements, an investigation must be instituted. Upon the filing of a complaint, staff responsible for the initial drafting of the Institution Memorandum are required to cross reference the complaint against a checklist of the Commission's rules of practice and procedures. Approximately half of the Institution Memorandum's are drafted by a Section 337 case manager from Docket Services and are then reviewed by Docket Service's Quality Assurance Attorney. The other half are drafted by the OUII's paralegal or law clerks. In some instances, the OUII Supervisory Attorneys or Investigative Attorneys will draft the Institution Memorandum if it involves unusual legal issues. Regardless of who drafts the Institution Memorandum, it is always reviewed and significantly embellished by the OUII's Director or Supervisory Attorneys who refine the domestic industry analysis and address any legal nuances. If appropriate, they also add public interest factors to be considered by the Administrative Law Judge. The OUII also obtains any necessary supplementation from the complainant during this period in order to ensure compliance with the rules. The Institution Memorandum is sent to General Counsel for concurrence and then to the Commissioners. In order to comply with the thirty day deadline, requests for supplementation and the drafting of the Institution Memorandum must occur in less than three weeks as each Commissioner receives one day to review it (six business days in total) before voting on institution.

<sup>11</sup> 19 C.F.R. § 210.10(a)(1) (2010).

<sup>12</sup> *Amgen, Inc. v. U.S.I.T.C.*, 902 F.2d (Fed. Cir. 1990).

<sup>13</sup> 19 C.F.R. § 210.10(a)(1) (2010).

# U.S. International Trade Commission

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### Purpose

Checking the complaint for sufficiency and compliance with the rules is a highly involved process which takes a considerable amount of staff time. The process ensures that the complaint adheres to the Commission's rigorous pleading standards in order to make sure that only properly pled complaints are instituted. Section 337 investigations require parties to dedicate a significant amount of resources to their defense, and, as such, it is particularly important to ensure that investigations instituted by the Commission are not frivolous. Furthermore, there is a need to ensure that all complaints are held to the same standard and contain allegations sufficiently supported by fact. Outside counsel confirm that they monitor public versions of instituted complaints on EDIS in order to see where the Commission has not been stringent in holding complainants to the rules. Finally, in most cases, the Institution Memorandum is the document primarily relied upon by the Commission in determining whether or not to institute an investigation.

### Issues

#### *1. Can the Institution Memorandum be further streamlined in cases which do not involve any peculiarities?*

In the majority of cases, the Institution Memorandum is largely a boilerplate document which summarizes the allegations set forth in the complaint. On occasions where compliance with the rules has been questioned or when the Institution Memorandum recommends that the Commission only institute against certain respondents or consolidate portions of the case with another investigation, the lengthy Institution Memorandum proves to be of value. Thus, the real utility of the Institution Memorandum is apparent when institution turns on more novel or complicated legal issues, particularly regarding matters specific to Section 337 investigations. In these instances, Commissioners' staff have expressed that they would greatly appreciate the OUII's legal analysis and insight but that these difficult legal issues are often too superficially addressed and could benefit from a more in depth analysis.

While the process of checking the complaint for sufficient compliance with the rules is extremely important, in most cases, this could be adequately accomplished by completion of the checklist, the action jacket, and a one to two page memorandum outlining the allegations of importation and sale, domestic industry, and public interest considerations. While the Institution Memorandum has recently been shortened, the process could potentially stand to benefit from an even more condensed version. In more challenging cases, a memorandum much like the one currently in place, but with an enhanced legal analysis, would be appropriate.

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### ***2. Does the informal communication that occurs between the OUII and potential parties to the investigation bring into question the transparency of the institution process?***

Both the OUII and outside counsel maintain that phone calls between them are common practice up until institution. Because counsel to the complainants are aware that the OUII drafts the Institution Memorandum, and therefore has an important role in whether a case get instituted, they regularly communicate with the OUII via telephone to voice their concerns and request the OUII's support. In fact, complainants dealing with new or unsettled legal issues are permitted to submit letters or informally consult with the OUII regarding their position at any time prior to institution.<sup>14</sup> After a complaint has been filed, the opportunity is available to respondents as well. Legal arguments made during this period do not become part of the record. In reality, the standard for institution is low enough that these communications are unlikely to have any effect on the OUII's analysis. Nonetheless, the mere opportunity to informally contact staff may lead to questions about the transparency of the process.

### ***3. Is the work required during the pre-institution process properly distributed among various offices?***

In 2007 Docket Services was reorganized and hired attorneys into newly designed case manager positions. The initial plan was to have one case manager per Administrative Law Judge, who would work exclusively on Section 337 cases. Currently, there are five case managers, and a sixth is not being sought. With one exception, all of the Section 337 case managers are attorneys, who undoubtedly have the capacity to handle some of the legal work that goes into the pre-institution phase. With additional training, and with the hiring of a sixth case manager, Docket Services would likely be able to take on some of the OUII's workload during the pre-institution phase in order to help them cope with the increasing Section 337 case load.

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<sup>14</sup> Duvall et al., *supra* note 2, at 73.

# U.S. International Trade Commission

## Evaluation Report

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### Management Comments and Our Analysis

On September 1, 2011, Chairman Deanna Tanner Okun provided management comments to the draft evaluation report. The Chairman agreed with our conclusion that the 337 pre-filing and pre-institution processes were an efficient use of Commission resources and noted that the Commission will take into consideration the issues presented in this report when the recent changes made to the other steps of the 337 process are re-evaluated. The Chairman's response is provided in its entirety as Appendix C.

### Objective, Scope, and Methodology

- Objectives:** Are the pre-filing and pre-institution processes for Section 337 investigations an efficient use of Commission resources?
- Scope:** The pre-filing phase is when the draft complaint review is conducted, prior to the formal filing of a complaint. The pre-institution phase is the thirty-day period from when the complaint is formally filed with the Commission to the institution of a Section 337 investigation.
- Methodology:** This evaluation was planned and performed to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. The legal authority for these processes was assessed by consulting the relevant statutes and the Code of Federal Regulations. A step by step analysis of both procedures was conducted by interviewing ITC staff from the OUII, General Counsel, Docket Services, the Trade Remedy Assistance Office and the Commissioner's office. In addition, outside counsel was interviewed and relevant documentation surrounding each process was reviewed.
- Definitions:** Efficient—process is conducted with low cost and minimal waste.

# U.S. International Trade Commission

## Appendix

### Appendix A

The following is an estimate of the cost of each draft complaint review conducted and Institution Memorandum drafted from Fiscal Year 2010, based on the average time expended as reported by relevant staff.

<b>Cost of Draft Complaint Reviews Conducted in FY 2010<sup>15</sup></b>						
<b>Staff</b>	<b>Grade/Step</b>	<b>Hourly Rate<sup>16</sup></b>	<b>Hours</b>	<b>Cost</b>	<b>Staff<sup>17</sup></b>	<b>Draft Reviews</b>
OUII Supervisory Attorneys	15/5	\$103.96	6	\$623.76	86	59
<b>Total Cost for Draft Reviews Conducted in 2010</b>						<b>\$53,643.36</b>
<b>Cost per Draft Review</b>						<b>\$909.21</b>

<b>Costs of Institution Memorandum Drafted in FY 2010 by Office</b>				
Memorandum Drafted by OUII (18)				
<b>Staff</b>	<b>Grade/Step</b>	<b>Hourly Rate</b>	<b>Hours<sup>18</sup></b>	<b>Cost</b>
OUII Paralegal <sup>19</sup>	9/5	\$43.37	6.5	\$281.91
OUII Supervisory Attorneys	15/5	\$103.96	5.25	\$545.79
<b>Subtotal for Memorandum Drafted By OUII FY 2010</b>				<b>\$14,898.60</b>
Memoranda drafted by Docket Services (33)				
<b>Staff</b>	<b>Grade/Step</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Cost</b>
OUII Supervisory Attorneys	15/5	\$103.96	5.25	\$545.80
DS Case Manager	11/5	\$52.24	10.5	\$548.52
DS Quality Assurance Attorney	13/5	\$74.79	3.5	\$261.77
<b>Subtotal for Memorandum Drafted by Docket Services FY 2010</b>				<b>\$44,750.97</b>
Total Costs Institution Memorandum FY2010				
<b>Total Cost for Memorandum Drafted in FY 2010</b>				<b>\$59,649.57</b>
<b>Number of Memorandum Completed in FY2010</b>				<b>51</b>
<b>Cost per Memorandum FY2010</b>				<b>\$1,169.60</b>

<sup>15</sup> Reviews of resubmitted drafts are not reflected in these costs.

<sup>16</sup> All hourly rates calculated by dividing OPM annual salary by average annual direct hours (1700) and multiplying by 1.26 to reflect overhead costs.

<sup>17</sup> Draft complaint reviews were occasionally conducted by two staffers.

<sup>18</sup> This includes the time spent drafting or reviewing the memorandum and completing the checklist.

<sup>19</sup> Not all Institution Memoranda were initially drafted by the paralegal. Some were drafted by the law clerks and others were drafted by the Supervisory or Investigative Attorneys.

# U.S. International Trade Commission

## Appendix

### Appendix B

Top ITC Firms			
Firm	Complainant	Respondent	Total
Adduci, Mastriani & Schaumberg	6	15	21
Alston & Bird	5	8	13
Finnegan, Henderson, Farabow, Garrett & Dunner	3	5	8
Fish & Richardson	5	3	8
Sidley Austin	2	6	8
Kirkland & Ellis	4	3	7
Weil, Gotshal & Manges	2	4	6
Jones Day	2	3	5
McDermott Will & Emery	3	2	5
Steptoe & Johnson	2	3	5
Arent Fox	0	4	4
Bridges & Mavrakakis	2	2	4
Covington & Burling	0	4	4
K&L Gates	1	3	4
Mayer Brown	0	4	4
Miller and Chevalier	0	4	4
Morrison & Foerster	2	2	4

*Multiple law firms may be involved in each case.<sup>20</sup>*

<sup>20</sup> Andrew Goldberg, *ITC Survey 2010: The Slugfest Continues*, Corporate Counsel (June 21, 2011), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202496549175&rss=cc#>.

# U.S. International Trade Commission

## Appendix

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### Appendix C

Chairman



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#### UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, DC 20436

CO76-JJ-044

September 1, 2011

#### MEMORANDUM

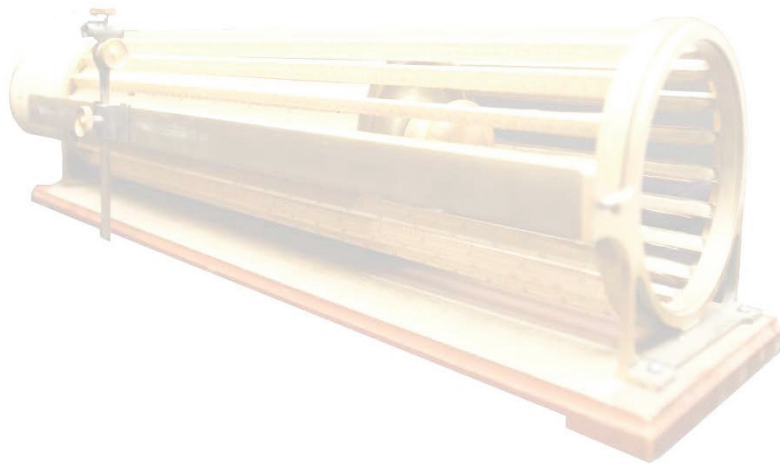
**TO:** Philip M. Heneghan, Inspector General

**FROM:** Deanna Tanner Okun, Chairman 

**SUBJECT:** Management Comments on the Inspector General's Draft Evaluation Report, "Evaluation of Pre-Filing and Pre-Institution of Section 337 Investigations"

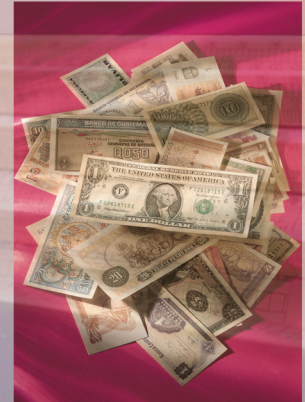
I appreciate the opportunity to review the Inspector General's draft report, *Evaluation of Pre-Filing and Pre-Institution of Section 337 Investigations*, dated August 4, 2011, and to provide comments.

Thank you for reviewing the processes that take place prior to and up until a Section 337 investigation is instituted by the Commission. The Inspector General's draft report found that the pre-filing and pre-institution processes for Section 337 investigations are an efficient use of Commission resources. These were the only two areas that were not changed when we recently revised our procedures for the rest of the 337 process. After the Commission has had sufficient time to evaluate the recent changes, we will consider the issues presented in this report as part of that re-evaluation.



*“Thacher’s Calculating Instrument” developed by Edwin Thacher in the late 1870s. It is a cylindrical, rotating slide rule able to quickly perform complex mathematical calculations involving roots and powers quickly. The instrument was used by architects, engineers, and actuaries as a measuring device.*

# To Promote and Preserve the Efficiency, Effectiveness, and Integrity of the U.S. International Trade Commission



U.S. International Trade Commission  
Office of Inspector General  
500 E Street, SW  
Washington, DC 20436

Office: 202-205-6542  
Fax: 202-205-1859  
Hotline: 877-358-8530  
[OIGHotline@USITC.gov](mailto:OIGHotline@USITC.gov)

# EXHIBIT F

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Kenneth H. Prochnow, SBN 112983</b> <b>Chiles and Prochnow, LLP</b> <b>2600 El Camino Real, Suite 412, Palo Alto, CA 94306</b> TELEPHONE NO.: (650) 812-0400      FAX NO. (Optional): (650) 812-0404 E-MAIL ADDRESS (Optional): kprochnow@chilesprolaw.com ATTORNEY FOR (Name): Plaintiff and Cross-Defendants	<div style="text-align: center;"> <b>FILED</b>  <b>AUG 13 2012</b> </div> <div style="text-align: right;"> <b>UCS</b>  <b>S. Smith</b> </div> <div style="text-align: center;">         David H. Yamaoka, Clerk of the Superior Court          County of Santa Clara, California          By:  </div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b> STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Unlimited Civil Jurisdiction	
PLAINTIFF/PETITIONER: Charles H. Moore DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	CASE NUMBER: 1-10-CV-183613
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: August 16, 2012      Time: 10:00 a.m.      Dept.: 2      Div.:      Room: Address of court (if different from the address above): Same as above <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):	

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties** (answer one):
  - a. ☒ This statement is submitted by party (name): Pltf & X-Def Charles H. Moore & X-Def GreenArrays, Inc.
  - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date): 9/27/10
  - b. ☒ The cross-complaint, if any, was filed on (date): 1/17/12
3. **Service** (to be answered by plaintiffs and cross-complainants only)
  - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):  
Plaintiff is unaware if cross-complainant TPL has served cross-defendant Green Arrays, Inc.
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
  - a. Type of case in ☒ complaint ☒ cross-complaint (Describe, including causes of action):  
 Complaint causes of action include cancellation, rescission, conspiracy, breach of contract and constructive trust. Cross-complaint causes of action include breach of contract, fraud, interference and misappropriation.

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER:
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	1-10-CV-183613

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*  
 Plaintiff entered into an agreement with defendant Technology Properties Limited ("TPL") wherein TPL was to sell licenses for plaintiff's invention & in exchange TPL would receive a percentage of the licensing revenue. TPL & defendants have been successful in the marketing of licenses but refuse to pay plaintiff. In the cross-complaint, TPL is claiming rights to another invention of plaintiff which plaintiff has been successfully developing on his own.  
☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*
5. **Jury or nonjury trial**  
 The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*
6. **Trial date**  
 a. ☐ The trial has been set for (date):  
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):  
 c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
 October 9 - 30, 2012 (jury trial, this court); November 28-30, 2012
7. **Estimated length of trial**  
 The party or parties estimate that the trial will take (check one):  
 a. ☒ days (specify number): 7 to 10  
 b. ☐ hours (short causes) (specify):
8. **Trial representation (to be answered for each party)**  
 The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:  
 a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. E-mail address:  
 f. Fax number:  
 g. Party represented:  
☐ Additional representation is described in Attachment 8.
9. **Preference**  
☒ This case is entitled to preference (specify code section): Cal Code Civ. Proc. 36(a)
10. **Alternative dispute resolution (ADR)**  
 a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
 (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
 (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.  
 b. **Referral to judicial arbitration or civil action mediation (if available).**  
 (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.  
 (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 (3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER:
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	1-10-CV-183613

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form <b>are willing to</b> participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER:
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	1-10-CV-183613

**11. Insurance**

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a. ☒ There are companion, underlying, or related cases.
- (1) Name of case: Brown v. Technology Properties Limited, et al.
- (2) Name of court: Santa Clara County Superior Court
- (3) Case number: 1-09-CV-159452
- (4) Status: Judgment entered
- ☒ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

**14. Bifurcation**

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u>                 | <u>Description</u> | <u>Date</u>    |
|------------------------------|--------------------|----------------|
| Plaintiff & Cross-Defendants | Written Discovery  | September 2012 |
| Plaintiff & Cross-Defendants | Depositions        | November 2012  |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER: 1-10-CV-183613
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	

**17. Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

**18. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

**19. Meet and confer**

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: August 6, 2012

Kenneth H. Prochnow, Attorney for Pltf & Cross-Def.

(TYPE OR PRINT NAME)

▶   
(SIGNATURE OF PARTY OR ATTORNEY)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

## SHORT TITLE:

C. Moore v. Technology Properties Limited, LLC, et al

## CASE NUMBER:

1-10-CV-183613

## ATTACHMENT 13a - RELATED CASES

(to Plaintiff / Cross-Defendant's Case Management Statement)

13(a)(1) (1) Name of case: D. Leckrone, et al. v. P. Marcoux, et al.

(2) Name of court: Santa Clara County Superior Court

(3) Case number: 1-09-CV-159593

(4) Status: Pending

13(a)(2) (1) Name of case: Anasift Technology, Inc. v. Technology Properties Limited, LLC, et al.

(2) Name of court: Santa Clara County Superior Court

(3) Case number: 1-10-CV-171986

(4) Status: Pending

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, **not** line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 6

1 **PROOF OF SERVICE FILED**

2 I, Terisa Gurzi, declare:

AUG 13 2012

3 1. I am over the age of 18 years and am not a party to the within action. My business  
4 address is 2600 El Camino Real, Palo Alto, California 94306. David H. Yanez, Jr., County Clerk, Santa Clara County Superior Court, Santa Clara County, California **S. Smith**

5 2. On August 6, 2012, I served the foregoing Plaintiff's and Cross-Defendants' CASE  
6 MANAGEMENT STATEMENT and this PROOF OF SERVICE on the interested parties  
7 herein by placing true and correct copies thereof in sealed envelopes, with postage prepaid  
8 thereon, and depositing the same with the United States Postal Service in Palo Alto, California,  
9 addressed as follows:

10 J. Mark Thacker, Esq.  
11 Ropers, Majeski, Kohn & Bentley  
12 50 W San Fernando St., Ste 1400  
San Jose, CA 95113

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct, and that this declaration is executed on August 6, 2012, at Palo  
15 Alto, California.

16   
Terisa Gurzi

17 /////

28 **Proof of Service- 1**

*Moore v. Technology Properties Limited, LLC, et al., Santa Clara County Superior Court No. 1-10-CV-183613*

{2655\01\WMU0925.DOC}

# EXHIBIT G

## Kate Lahnstein

---

**From:** Jim Otteson [jim@agilityiplaw.com]  
**Sent:** Wednesday, September 26, 2012 7:53 PM  
**To:** 'Acer\_Amazon\_Novatel Group ' (alias); 'Andrew P. Valentine ' (Samsung); 'B&N Group ' (alias); 'Charles T. Hoge ' (PTSC); 'Eric C. Rusnak'; GAR-5; 'Garmin Group ' (erisIP alias); 'HTC Group ' (alias); 'Huawei Group ' (alias); 'Jay H. Reiziss ' (ZTE); 'Jennifer Hayes ' (SierraW); 'Kyocera Group ' (alias); 'LG Group ' (alias); Lou Mastriani; 'M. Andrew Woodmansee ' (Kyocera); 'Nintendo Group ' (alias); 'Paul F. Brinkman ' (B&N); 'Samsung Group ' (alias); 'Scott A. Elengold ' (LG); SIERRA-001; 'Stephen R. Smith ' (HTC\_Nintendo); 'Timothy C. Bickham ' (Huawei Tech); Tom Schaumberg; Whitney Winston; 'ZTE Group ' (alias)  
**Cc:** ITC-853  
**Subject:** ITC-853: Two day notice of motion for leave to amend Complaint

Counsel:

Pursuant to Ground Rule 2.2, please let us know if you will oppose Complainants' motion to file an Amended Complaint to add a description of litigation that was inadvertently omitted from the original Complaint. We intend to file the motion by Friday.

Thanks very much.

-- Jim

Jim Otteson  
Agility IP Law, LLP  
149 Commonwealth Drive  
Menlo Park, CA 94025  
Tel: 650-227-4800, ext. 101  
Dir: 650-318-3470  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **RESPONDENTS SIERRA WIRELESS, INC.'S AND SIERRA WIRELESS AMERICA, INC.'S MOTION TO TERMINATE FOR COMPLAINANTS' VIOLATION OF THEIR DUTY OF CANDOR TO THE COMMISSION AND THE MEMORANDUM IN SUPPORT THEREOF** was served to the parties, in the manner indicated below, this 28th day of September 2012:

The Honorable Lisa R. Barton  
Acting Secretary  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, SW, Room 112-A  
Washington, DC 20436

☒ **VIA ELECTRONIC FILING**

The Honorable E. James Gildea  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W.  
Washington, DC 20436

☒ **VIA HAND DELIVERY – 2 Copies**

Whitney Winston, Esq.  
Investigative Attorney  
Office of Unfair Import Investigations  
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☒ **VIA FIRST-CLASS MAIL**

/s/ Patricia L. Cotton, Senior Paralegal  
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.