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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

CHARLES H. MOORE,

Plaintiff,

vs.

TECHNOLOGY PROPERTIES LIMITED,  
LLC, et al.,

Defendants.

Case No.: CV10-4747 JW

**Plaintiff Charles H. Moore’s Memorandum  
In Support of Time-Shortened Hearing On  
Motion for Remand**  
[Local Rule 6-3(a)]

**Date:** Submitted November 24, 2010

**Time:** Not Applicable

**Room:** 8, 4<sup>th</sup> Floor

**Judge:** Honorable James Ware

Plaintiff Charles H. Moore is an inventor. Among other things, he has invented and patented a series of microprocessor chips. In the 1980’s, Plaintiff Moore developed and patented what have become known as the “Moore Microprocessors Patent Portfolio” (the “MMP Portfolio”).

In 2002, Plaintiff Moore entered into an agreement with his attorney, Defendant Daniel Leckrone (“Attorney Leckrone”). Attorney Leckrone drew up what he termed a “Commercialization Agreement,” which the parties call a “ComAg.” The 2002 ComAg, governed specifically by the laws of the State of California, and modified through amendment in 2007, is at the core of the present litigation.

The MMP Portfolio is extremely valuable. Attorney Leckrone, through his company

1 Defendant Technology Properties Limited LLC and its licensing division Defendant Alliacense,  
2 has issued licenses totaling well in excess of \$270 million. Plaintiff Moore is entitled to a  
3 substantial share of TPL's royalty revenues. Plaintiff Moore has been paid a fraction of what he  
4 is owed by TPL.

5 Attorney Leckrone has done more than simply betray Plaintiff Moore and the obligations  
6 his company owes to Moore. As set out in the now-removed complaint that Plaintiff Moore filed  
7 in the Santa Clara County Superior Court, that Court alone is awash with Leckrone/TPL  
8 litigation.<sup>1</sup> In one case in particular, the half-owner of the MMP Portfolio, a company known as  
9 "Patriot," is suing Defendant TPL and Defendant Alliacense for their mis-appropriation of MMP  
10 Portfolio licensing proceeds. In this "*Patriot* litigation," TPL and Alliacense are alleged to have  
11 negotiated a package license lumping the MMP Portfolio with other patents that TPL controls  
12 entirely or claims to control, allocating to the MMP Portfolio only 10% of a \$5 million licensing  
13 fee (this in a licensing package to which the MMP Portfolio clearly supplies most of the value).  
14 Patriot has obtained a preliminary injunction in the *Patriot* litigation, providing Patriot with  
15 reasonable notice and a right of refusal as to future MMP Portfolio licenses.

16 Patriot thus knows of the licenses that TPL issues, and has through injunction acquired  
17 the knowledge and authority to prevent abuse. Plaintiff Moore remains ignorant of TPL licenses  
18 (despite a contractual right to know), and he has not been paid for any license issued since 2008.

19 Plaintiff Moore filed this action to rescind the Leckrone-drafted ComAg agreements and  
20 amendments, and to obtain damages for Defendants' breaches and misrepresentations. To ensure  
21 that any State Court judgment would have some value, Plaintiff Moore sought a preliminary  
22 injunction in State Court, mirroring the relief previously granted to Patriot against Defendant  
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24 <sup>1</sup> Pending Leckrone/TPL State Court litigation includes (a) *Daniel Leckrone v. Phil Marcoux et al*, Santa Clara  
25 County Superior Court No. 1-09-CV159593 (involving Defendant Marcoux's retrieval of the so-called "Chipscale"  
26 patents that Defendant Leckrone failed to pay for but continues to license), see Complaint Par. 49(a), at 13:7 – 14:1;  
27 (b) *Brown v. Technology Properties Limited, LLC, et al*, Santa Clara County Superior Court No. 1-09-CV-159452  
28 (Defendant TPL's alleged failure to pay monies due to investor Chet Brown, with the funds to have come from  
MMP Portfolio proceeds)(case being tried this week to Superior Court Judge Huber), see Complaint Par. 50, at 14:8-  
17; (c) *Patriot Scientific Corporation v. Technology Properties Limited LLC*, Santa Clara County Superior Court  
No. 1-10-CV-169836 (the "*Patriot* litigation" described in the text), see Complaint Par. 52, at 14:22 – 15:10; and (d)  
*Anasift Technology v. Technology Properties Limited LLC*, Santa Clara County Superior Court No. 1-09-CV153478  
(collection action against Defendant TPL), see Declaration of Charles H. Moore In Support of Motion for  
Preliminary Injunction, Par. 31, at 6:15-18.

1 TPL. Hearing on Plaintiff Moore's motion for injunction was set for November 2, 2010.  
2 Defendants' State Court opposition to Plaintiff Moore's motion was due on October 20, 2010.

3 Rather than resist Plaintiff Moore's preliminary injunction motion in State Court,  
4 Defendants removed this action to this Court. On its face, this tactic seems peculiar, given the  
5 fact that Defendants are litigating – indeed, are in trial at this writing—in the Santa Clara County  
6 Superior Court, in a multiplicity of actions including the *Patriot* litigation involving the same  
7 MMP Portfolio licensing rights and procedures that are at the core of this case. Plaintiff Moore's  
8 State Court complaint invokes no federal law, nor does it require any ruling on the validity or  
9 scope of any patent.

10 Regrettably, Defendants' removal must be seen for what it is: a transparent and  
11 successful ploy to avoid State Court hearing on a motion for injunctive relief that would perforce  
12 have been granted. (The relief Plaintiff Moore sought and required was virtually identical to, and  
13 therefore no more burdensome than, the State Court injunctive relief that Patriot secured for  
14 itself in the *Patriot* State Court litigation.)

15 Plaintiff Moore could re-file his injunction motion in this Court, now augmented by a  
16 request for temporary restraining order in view of the time slipping by, undisclosed licenses  
17 being issued, and license revenues in danger of mis-appropriation (see accompanying declaration  
18 of former Alliacense employee David Sciarrino as to the likelihood of unknown licensing being  
19 conducted at this writing).

20 However, in the absence of any federal statute, case, authority or relief set out or  
21 requested in Plaintiff Moore's State Court complaint, subject matter jurisdiction in this Court  
22 seems suspect. If this Court indeed lacks subject matter jurisdiction over this case – as Plaintiff  
23 Moore's remand papers strongly suggest – any injunctive relief considered or granted by this  
24 Court before remand is considered is likely (a) to be a waste of this Court's time, and (b) to  
25 represent work for Court and counsel alike that will have to be re-done, from scratch, when this  
26 case is remanded and the State Court, post remand, must again take up Plaintiff Moore's claim  
27 for *pendent lite* injunctive relief.

28 In addition, early consideration of remand may obviate the need for Court and counsel to

1 take up Defendants' pending motions to dismiss, and to stay this removed case in favor of  
 2 arbitration (both motions are set for February 2011 hearing before this Court). And even in the  
 3 unlikely event that remand is denied at the early hearing that Plaintiff Moore seeks, and this  
 4 action remains here, Plaintiff Moore will be able to amend his State Court complaint to address  
 5 Defendants' motion to dismiss (which is largely directed to technical federal pleading defects in  
 6 what is, of course, a State Court complaint). Early decision on remand will benefit this matter,  
 7 regardless of what this Court's decision might be.

8 It is a mistake to put the cart before the horse. This Court and the parties should first  
 9 consider and address whether this removed matter belongs here, before perhaps unnecessarily  
 10 moving into the merits of the case for purposes of injunction, dismissal and/or arbitration.

11 In support of time-shortened hearing on remand, Plaintiff Moore has submitted his  
 12 counsel's declaration (to show compliance with Local Rule 6-3), as well as a request for judicial  
 13 notice of his State Court declaration in support of injunction and the declaration of a former  
 14 Alliacense employee, Dave Sciarrino, to show the need for a prompt ruling on remand.

### 15 Conclusion

16 For the reasons given and on the authorities cited, Plaintiff Moore respectfully requests  
 17 that this Court order hearing on his motion for remand as follows (the dates requested are the  
 18 earliest possible, given the notice and response requirements of Local Rule 6-3):

- 19 (a) Hearing on December 20, 2010 (with apologies to the Court for being compelled to  
 20 request hearing on an already fully booked Monday<sup>2</sup>);  
 21 (b) Defendants' opposition to remand due on or before Monday, December 6, 2010;  
 22 (c) Plaintiff Moore's reply due on or before Wednesday, December 8, 2010.

23 Respectfully submitted,

24 DATED: November 24, 2010

CHILES AND PROCHNOW, LLP

25 By: s/Kenneth H. Prochnow

26 Kenneth H. Prochnow

27 Attorneys for Plaintiff CHARLES H. MOORE

28 <sup>2</sup> Plaintiff Moore would of course consent to hearing on December 13, 2010, but recognizes the burden that such an  
 early date would place upon this Court. If December 20<sup>th</sup> is not available for hearing, Plaintiff Moore requests  
 hearing on the earliest date on which the Court can hear this matter.