

EXHIBIT 5

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Of Counsel: John E. Lynch (Admitted Pro Hac Vice)

Attorneys for Patriot Scientific Corporation
Defendant/Counterclaimant Case No. C-04-0439 (SBA)
Plaintiff Case No. C-03-5787 (SBA)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

INTEL CORPORATION
Plaintiff,
v.

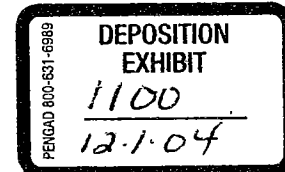
PATRIOT SCIENTIFIC
CORPORATION,
Defendant.

) Related Civil Actions
) No. C-04-0439 (SBA)
) No. C-03-5787 (SBA)

) **AFFIDAVIT OF WILLIS E. HIGGINS**
) **IN SUPPORT OF CROSS-MOTION TO**
) **CONSOLIDATE AND BIFURCATE AND**
) **IN OPPOSITION TO MOTIONS TO**
) **STAY**

DATE: May 11, 2004
TIME: 1:00 p.m.
BEFORE: The Honorable
Saundra B. Armstrong

[Captions continued on following page.]



1 PATRIOT SCIENTIFIC
2 CORPORATION,

3 Counterclaimant,

4 v.

5 INTEL CORPORATION,

6 Counterdefendant.

7 PATRIOT SCIENTIFIC
8 CORPORATION,

9 Plaintiff,

10 v.

11 FUJITSU COMPUTER SYSTEMS
12 CORPORATION, MATSUSHITA
13 ELECTRIC CORPORATION OF
14 AMERICA, NEC SOLUTIONS
15 (AMERICA), INC., SONY
16 ELECTRONICS, INC. TOSHIBA
17 AMERICA, INC. CHARLES H.
18 MOORE, TECHNOLOGY
19 PROPERTIES LTD., and
20 DANIEL E. LECKRONE,

21 Defendants.

22 STATE OF MAINE

23 COUNTY OF PENOBSCOT } ss.

24 WILLIS E. HIGGINS, being duly sworn, deposes and says:

25 1. I am an attorney duly admitted to practice in the
26 courts of the State of Maine; am an inactive member of the State
27 Bar of California (Bar No. 081287); am admitted to practice before
28 this Court; am the Founding Director of the Maine Patent Program at
the University of Maine School of Law, with offices in Portland and
Orono, Maine; and am a retired former member of the firm of Cooley

1 Godward LLP, counsel for Russell H. Fish III, Charles H. Moore,
2 Nanotronics Corporation, and Patriot Scientific Corporation
3 ("Patriot") for the original 1989 patent application and the
4 subsequent divisional applications, one of which matured into U.S.
5 Patent No. 5,809,336, "High Performance Microprocessor Having
6 Variable Speed System Clock" (the "'336 Patent").

7 2. I make this affidavit at the request of Patriot for
8 use on Patriot's cross-motion to consolidate and bifurcate and
9 Intel Corporation's motion to stay proceedings.

10 3. I have not been asked by Patriot to waive the
11 attorney-client privilege, and I do not intend by this affidavit to
12 waive the privilege.

13 4. I make this affidavit on the basis of my personal
14 knowledge, my participation in the events described in it,
15 documents from my files at my previous firm (Cooley Godward), and
16 my knowledge of the facts relating to these cases.

17 5. The terms "Sh-Boom Technology" and "Sh-Boom
18 Microprocessor" refer to the same thing, a complex microprocessor
19 system for which a patent application was filed in 1989 with the
20 U.S. Patent and Trademark Office ("PTO") (number 07/389,344).

21 6. They should not be confused with the device and
22 method covered by the '336 Patent, known informally as the "Fish
23 Clock." The Fish Clock device and method were a small part of the
24 Sh-Boom Microprocessor System.

25 7. On behalf of my then clients Russell H. Fish, III
26 ("Fish"), and Charles H. Moore ("Moore"), I prepared the initial
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28

1 patent application for the Sh-Boom Microprocessor System and filed
2 it with the PTO on August 3, 1989.

3 8. Fish and Moore executed a Declaration and Power of
4 Attorney For Patent Application on August 2, 1989, listing Messrs.
5 Fish and Moore as joint inventors and appointing me to represent
6 them before the PTO ("1989 Declaration"). (Newcombe Decl., Ex. B.)

7 9. At the time of the 1989 application, I listed Fish
8 and Moore as co-inventors because the application covered the Sh-
9 Boom Microprocessor System, to which both had contributed.

10 10. If a single patent had been issued for the 1989
11 filing, Fish and Moore would properly have been treated as co-
12 inventors for the entire Sh-Boom Microprocessor System because Fish
13 and Moore had jointly contributed to the system.

14 11. The patent examiner to whom the 1989 application was
15 assigned determined that the Sh-Boom Microprocessor System Patent
16 Application actually claimed ten inventions and issued a
17 restriction requirement identifying the ten inventions and
18 requiring that each of them be prosecuted as a separate patent
19 application. (Ex. A.)

20 12. The division order allowed one of the ten to be
21 prosecuted under the original filing number (the device I selected
22 ultimately became U.S. Patent No. 5,440,749 (the "'749 Patent")).
23 Later, I prepared filings pursuant to 37 C.F.R. § 1.60, for some of
24 the other inventions identified by the patent examiner, one of
25 which became the '336 Patent.

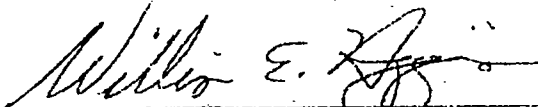
26 13. The Code of Federal Regulations, 37 C.F.R. § 1.60,
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1 allowed me to use the 1989 Declaration with each new filing because
2 each had been part of the original filing in 1989. (Ex. B.)

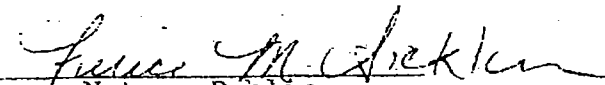
3 14. Not knowing how to attribute inventorship among the
4 ten devices and methods resulting from the restriction requirement,
5 knowing that the patent statute provided an easy method for
6 correction of inventorship, and working under severe time pressures
7 and financial limitations to file the divisional applications
8 before the GATT Legislation became law on June 8, 1995, I decided
9 to use the 1989 Declaration without determining specific
10 inventorship for any of the ten devices and methods and re-
11 submitted the 1989 Declaration with the divisional application for
12 the '336 Patent and the others.

13 15. The statement of co-inventorship of Fish and Moore
14 in the 1989 Declaration bears no factual relationship to actual
15 inventorship of the '336 Patent or the others.

16 16. The '336 Patent (Fish Clock) has only ten claims
17 compared with the 1989 application for the "Sh-Boom Micro-
18 processor," which had seventy claims.

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21 
Willis E. Higgins

22 Sworn to before me this
23 20th day of April, 2004.

24
25 
Notary Public

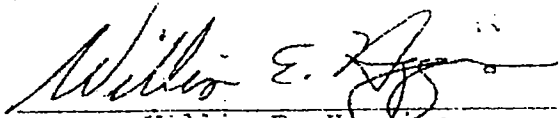
26 FELICE M. SICKLER
27 Notary Public, Maine
My Commission Expires July 13, 2005

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