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9 Attorneys for Charles H. Moore

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 BARCO N.V., a Belgian corporation,

14 Plaintiff,

15 v.

16 TECHNOLOGY PROPERTIES LTD.,
17 PATRIOT SCIENTIFIC CORP., and
18 ALLIACENSE LTD.,

19 Defendants.

Case No. 5:08-CV-05398 JF

**DECLARATION OF CHARLES H.
MOORE IN SUPPORT OF HIS MOTION
TO DISQUALIFY BAKER &
MCKENZIE AND TO INTERVENE FOR
THAT LIMITED PURPOSE**

Date: February 25, 2011

Time: 9:00 a.m.

Courtroom: 3

Judge: Hon. Jeremy Fogel

20
21 I, Charles H. Moore, declare as follows:

22 1. I have personal knowledge of the matters set forth below and if called and sworn
23 as a witness, I could and would competently testify to the facts set forth herein, save and except
24 for matters stated upon information and belief, and as to such matters I believe it to be true.

25 2. In 1989, I and Russell H. Fish, III were named as co-inventors in a patent
26 application that led to the eventual issuance of several patents covering novel architectures and
27 clocking mechanisms critical to the efficient and high-speed performance of today's
28

1 microprocessors. All of the patents that issued as a result of that original application are
2 collectively referred to as the Moore Microprocessor Portfolio (“MMP”).

3 3. I am informed and believe that three of these patents are at issue in the current
4 litigation: U.S. Patent Nos. 5,809,336 (“the ’336 patent,” issued Sept. 15, 1998), 5,440,749 (“the
5 ’749 patent,” issued Aug. 8, 1995), and 5,530,890 (“the ’890 patent,” issued June 25, 1996).
6 Each of these patents identifies Mr. Fish and me as co-inventors.

7 4. Since at least 1989, I have been working to develop and commercialize the
8 technology covered by the patents-in-suit in this action, both through creation of products that
9 practice the patents and by licensing the patents to third parties.

10 5. In August 1990, I retained Baker & McKenzie (“B&M”) as my attorneys to assist
11 and advise me in my efforts to commercialize and develop my technology. In connection with
12 that representation, I provided B&M with my confidential information and opinions concerning
13 development and commercialization of the technology, including in which areas and products
14 this technology would be valuable and how it could be reduced to practice in particular
15 applications.
16

17 6. On August 24, 1990, B&M memorialized the subject matter of the representation
18 in an engagement agreement signed by a B&M partner and by me. I executed the agreement
19 with B&M on behalf of myself as B&M was representing me, not any other entity, including
20 Computer Cowboys. A true and correct copy of the B&M’s August 24, 1990 engagement
21 agreement is attached as Exhibit A (“B&M Agreement”) and is incorporated by this reference.

22 7. The B&M Agreement reads in part: “Our [B&M’s] services will include
23 representation and advice with respect to your development and commercialization of your
24 technology.” The reference to “your development and commercialization of your technology” is
25 to my development and commercialization of the same technology covered in part by the
26 patents-in-suit in this action.

27 8. I continue to hold an economic interest in the patents-in-suit. Defendant
28 Technology Properties Ltd. (“TPL”), which presently holds interests in those and related patents,

1 continues to license them. I am informed and believe that over 80 leading technology companies
2 have purchased commercial licenses to the MMP patents.

3 9. I am entitled to receive a portion of any licensing or commercialization revenue
4 generated by the MMP patents. I also am entitled to a portion of any damages award paid by
5 Barco in this litigation.

6 10. I did not and do not consent to B&M representing Barco.

7 11. I did not learn that B&M was representing a party adverse to me in this litigation
8 until I was served by B&M with its subpoena demanding my deposition in this action. When I
9 realized that B&M attorneys were representing a party in this litigation, I searched for and
10 provided a copy of my B&M engagement letter to my attorney, Kenneth H. Prochnow, at the
11 time that he met with me to prepare me to testify pursuant to subpoena in this and in two other
12 related cases pending before this Court.

13 12. I authorize submission of this declaration by my attorney bearing my electronic or
14 facsimile signature with the same purpose and effect as if the original thereof were available.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct. Executed this 12th day of JANUARY, 2010, at

17 INCLINE VILLAGE NV
18

19
20 
21 Charles H. Moore

BAKER & MCKENZIE

ATTORNEYS AT LAW

660 HANSEN WAY

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August 24, 1990

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ZURICH

SUSAN H. NYCUM

NORMA

Mr. Chuck Moore
Computer Cowboys
410 Star Hill Road
Woodside, California 94062

Re: Engagement of Baker & McKenzie

Dear Mr. Moore:

We are pleased that you have selected Baker & McKenzie as your attorneys. We look forward to a successful and satisfying relationship with you.

This Agreement is to set forth the terms and conditions under which we will be acting as attorneys for you. In this Agreement, we will define several aspects of our relationship so that you, and we, will have a clear understanding of our agreements with respect thereto.

1. Services to be Provided by Baker & McKenzie

Our services will include representation and advice with respect to your development and commercialization of your technology. The performance of our services necessarily will include substantial activities outside of your immediate presence, including such things as legal research, factual investigation, and preparation of documents.

2. Fee for Services Performed

As compensation for the services which have been performed to date by our firm and those to be performed, we shall be paid a reasonable fee, which primarily will be determined by multiplying the number of hours spent working on your matters by

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3. Disbursements.

In addition to the fees described above, we shall be reimbursed for all out-of-pocket disbursements actually incurred and paid by us in connection with legal services performed under this Agreement. Included within this category are photocopying charges, filing fees, court and deposition reporter fees, travel expenses, word processing charges, Lexis research charges, and long distance telephone charges, among other things. From time to time we may and usually do request that you make an advance payment for an unusual cost item, and may and usually do request that you make payment directly to the supplier of the goods or services.

4. Manner of Billing and Payment.

It may be helpful to describe how our internal billing procedure works so that you will know how the data is generated and how the amount of each statement has been determined.

Each client is assigned a client number and each matter for that client is assigned a separate case number. Each attorney and legal assistant in the office records his or her time by case number on individually prepared daily timesheets. In addition, disbursements are also recorded. This data (attorney time and disbursements) is then put into a computer and a pro forma bill is produced. The pro forma bill reflects, among other things, the services performed as well as costs and disbursements incurred. The partner in charge of each matter then reviews the pro forma bill and, after applying the factors described above, determines the amount to be charged for the services rendered and the costs and disbursements incurred during the relevant billing period. A final statement is then prepared by the computer, showing all of the services performed, the attorneys who performed each task, the fees charged, and the nature and amount of costs and disbursements.

We require a \$500 initial retainer with this letter against which we will perform our initial services. Baker & McKenzie reserves the right to request further additional retainers once any prior retainer has been expended.

As you know, a part of the cost of doing business is the costs of funds. We will tender statements for our professional services and related costs and disbursements at such intervals as we deem appropriate (usually monthly) unless a

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multiplying the number of hours spent working on your matters by our regular and customary billing rates for similar services performed by this firm. At the present, our usual billing rates are \$55 to \$75 per hour for legal assistants, \$90 to \$175 per hour for associates and \$200 to \$275 per hour for partners. Each attorney has been assigned a billing rate which is determined by his or her experience and expertise. Special rates occasionally are applied where advanced technological equipment is utilized to increase productivity. These basic hourly billing rates may increase in the future as our costs continue to increase and as our attorneys acquire more expertise and experience. We would be glad to advise you of the hourly billing rate of any attorneys working on your matters. Our time is charged in increments of 1/10 of an hour (i.e., 6-minute units), with a minimum billable increment of 1/20 of an hour.

The mathematical computation of fees may be adjusted by us to reflect one or more of the following factors:

A. The time involved, the efficiency with which we have accomplished the work, the novelty and difficulty of the questions presented, and the legal skill required to perform the legal services properly;

B. The likelihood that acceptance of this employment will preclude other employment by this firm;

C. The fee we customarily charge for similar services;

D. The amount involved or at risk in the matter and the results obtained;

E. Time limitations imposed by you or by the circumstances of the matter, including some consideration of the extent to which the services were required to be performed during evening and weekend hours; and

F. Such other factors discussed between us which are relevant to the magnitude of our fees.

While we may from time to time for your convenience furnish you with estimates of the amount of fees we anticipate will be charged with respect to services to be performed under this Agreement, such estimates are by their nature inexact and cannot be binding on either of us.

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different arrangement is made with you. Our statements will be paid forthwith and, in any event, within 30 days after they are presented unless, of course, other arrangements have been made with you in advance. Invoices remaining unpaid after 30 days will bear interest at the lesser of 12% per annum or the maximum rate permitted by law.

6. Responsibility of Client.

It will be your responsibility to cooperate fully with us in our work by, among other things, providing us with relevant information.

7. Arbitration of Disputes.

We seldom have disagreements with our clients concerning our fees, but some occasionally do occur. It is our desire to resolve any such disagreement through amicable discussion; unfortunately, such disputes cannot always be resolved in that way. Our experience is that in such instances it is in the interest of both the client and our firm that the dispute be resolved through binding arbitration rather than by legal action and the courts. To that end, you and we agree that any dispute arising under this Agreement which cannot be resolved in a reasonable time by discussions between us shall be submitted to binding arbitration by the Santa Clara County Bar Association pursuant to California Business and Professions Code Section 6200 et seq. Or, should that organization decline to arbitrate the dispute, before the American Arbitration Association pursuant to its rules. Any arbitration award will be binding and enforceable in the Santa Clara County, California, Superior Court or the United States District Court for the Northern District of California.

8. Termination of Services.

You shall have the right at any time to terminate our services upon written notice to us, and we shall immediately after receiving such notice cease to render additional services. Should you elect to exercise such right, we shall cooperate with you in facilitating the orderly transfer of your files and records to you or to your new attorneys. Such termination shall not, however, relieve you of the obligation to pay the fees due for services rendered and disbursements incurred prior to such termination.

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If you should fail to meet your obligations hereunder and continue to fail to do so for ten (10) or more days after written notice thereof from us, we shall have the right to declare this Agreement at an end and to decline to represent you further. Should we elect to exercise that right, you agree to cooperate in freeing us of any obligation to perform further, including the execution and delivery of a substitution of attorneys in any court or administrative proceeding. This right is in addition to those created by statute or recognized by the rules of professional conduct which govern lawyers.

While such extensive consideration of fees and costs and of our mutual responsibilities may seem unduly commercial, we have found that it aids the development of good relationships with our clients and avoids future misunderstandings. Therefore, if you find the foregoing to be in order, please sign this Agreement where indicated below. Once it is fully executed it should be returned to our offices.

Throughout our relationship we want you to be satisfied with our fees as well as the professional services we perform on your behalf; accordingly, we invite your inquiry if you have any questions concerning either.

Sincerely,



Susan H. Nycum

SHN:js

The foregoing is agreed to and accepted.

Dated: August 31, 1990.

