UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JED MARGOLIN,

Plaintiff

v.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Defendant.

Case No. 3:09-cv-00421-LRH-(VPC)

Appendix

OPPOSITION TO NASA's CROSS-MOTION FOR SUMMARY JUDGMENT

Jed Margolin
1981 Empire Rd.
VC Highlands, NV 89521-7430
Phone: 775-847-7845
Email: jm@jmargolin.com

Dated: October 4, 2010

Appendix - Index

Exhibit 1

Exhibit 1

Jed Margolin

From: "HQ-FOIA" <hq-foia@nasa.gov>
To: <jm@jmargolin.com>
Sent: Monday, May 18, 2009 12:30 PM
Attach: 2008-270.pdf; 08-270.DOC
Subject: FOIA 2008-270

FOIA 08-270 May 14, 2009

Mr. Jed Margolin
1981 Empire Road
Reno, NV 89521-7430
jm@jmargolin.com

Dear Mr. Margolin:

This is in response to your request received on June 30, 2008, pursuant to the Freedom of Information Act (FOIA) for *documents related to the Administrative Claim of Jed Margolin for infringement of U.S. Patent Nos. 5,566, 073 and 5,904,724; NASA Case No. I-222.*

The NASA Headquarters Office of the General Counsel conducted a search and from that search provided the enclosed documents responsive to your request.

It has been determined that portions of the records found responsive to your request contain information which is exempt from disclosure under the deliberative process privilege of Exemption 5. This privilege covers advisory opinions, recommendations, and deliberations, which are part of the government decision-making process, 5. U.S.C.§552(b)(5).

You may appeal this initial determination to the NASA Administrator. Your appeal must (1) be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20546, (2) be clearly identified on the envelope and in the letter as an "Appeal under the Freedom of Information Act", (3) include a copy of the request for the agency record and a copy of this initial adverse determination, (4) to the extent possible, state the reasons why you believe this initial determination should be reversed, and (5) be sent to the Administrator within thirty (30) calendar days of the receipt of this initial determination.

I apologize for the delay in processing your request. I appreciate your patience.

Sincerely,

Original Signed

Kellie N. Robinson
FOIA Public Liaison Officer
Headquarters
NASA
300 E Street, SW
Washington, DC 20546

Enclosures

From: McConnell, Stephen (HQ-NB000) [mailto:stephen.mcconnell-1@nasa.gov]
Sent: Tuesday, July 01, 2008 8:45 AM
To: foia@hq.nasa.gov
Cc: Robinson, Kellie N. (HQ-NB000)
Subject: FW: FOIA Request

From: Jed Margolin [mailto:jm@jmargolin.com]
Sent: Saturday, June 28, 2008 10:06 PM
To: nasafoia@nasa.gov
Subject: FOIA Request

This request is made pursuant to the Freedom of Information Act.

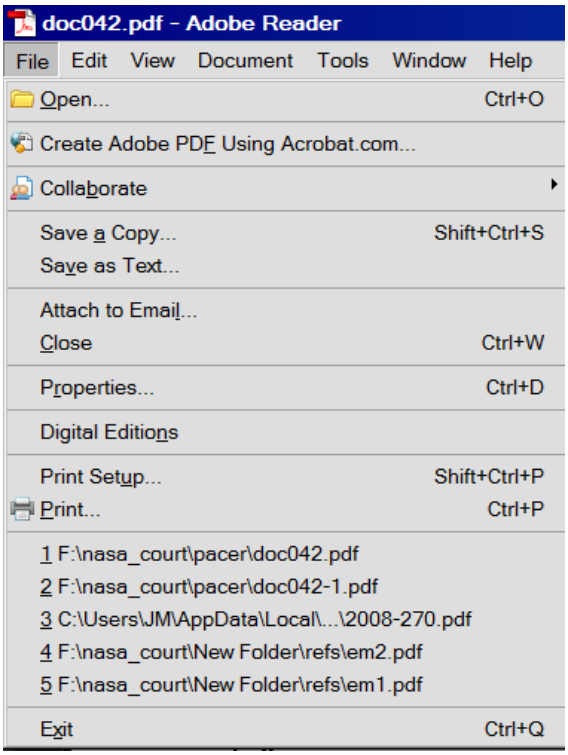
I would like all documents related to the **Administrative Claim of Jed Margolin for Infringement of U.S. Patent Nos. 5,566,073 and 5,904,724; NASA Case No. I-222**.
I am attaching a letter dated June 11, 2003 from Alan Kennedy, Director, Infringement Division, Office of the Associate General Counsel as file ***jm_nasa.pdf***. I provided the information requested, it was received by Mr. Kennedy, and thereafter Mr. Kennedy refused to respond to my attempts to find out the results of the investigation.

I believe NASA has had enough time to have completed its investigation by now.

Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430
775-847-7845
www.jmargolin.com

Exhibit 2

Exhibit 2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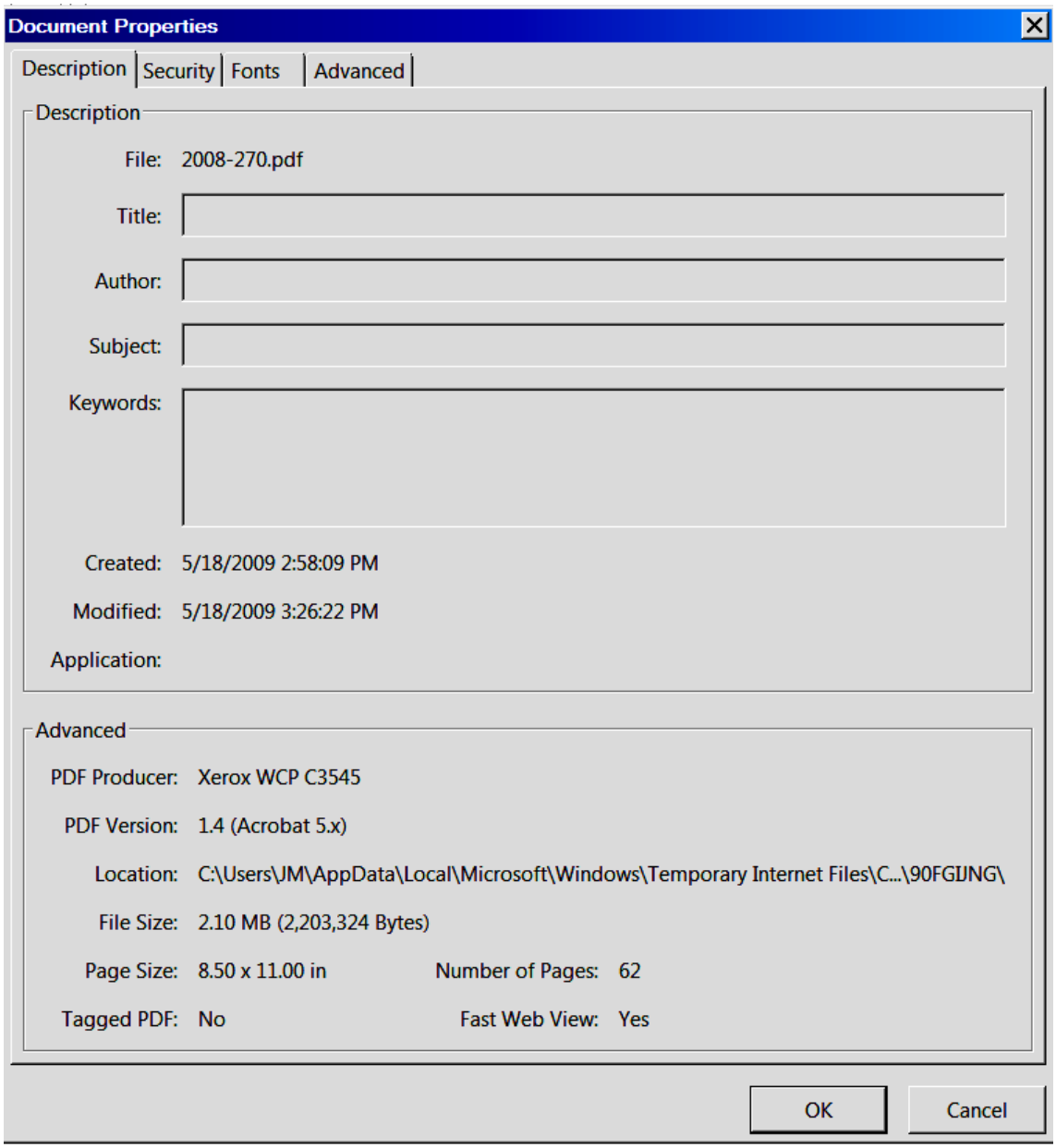
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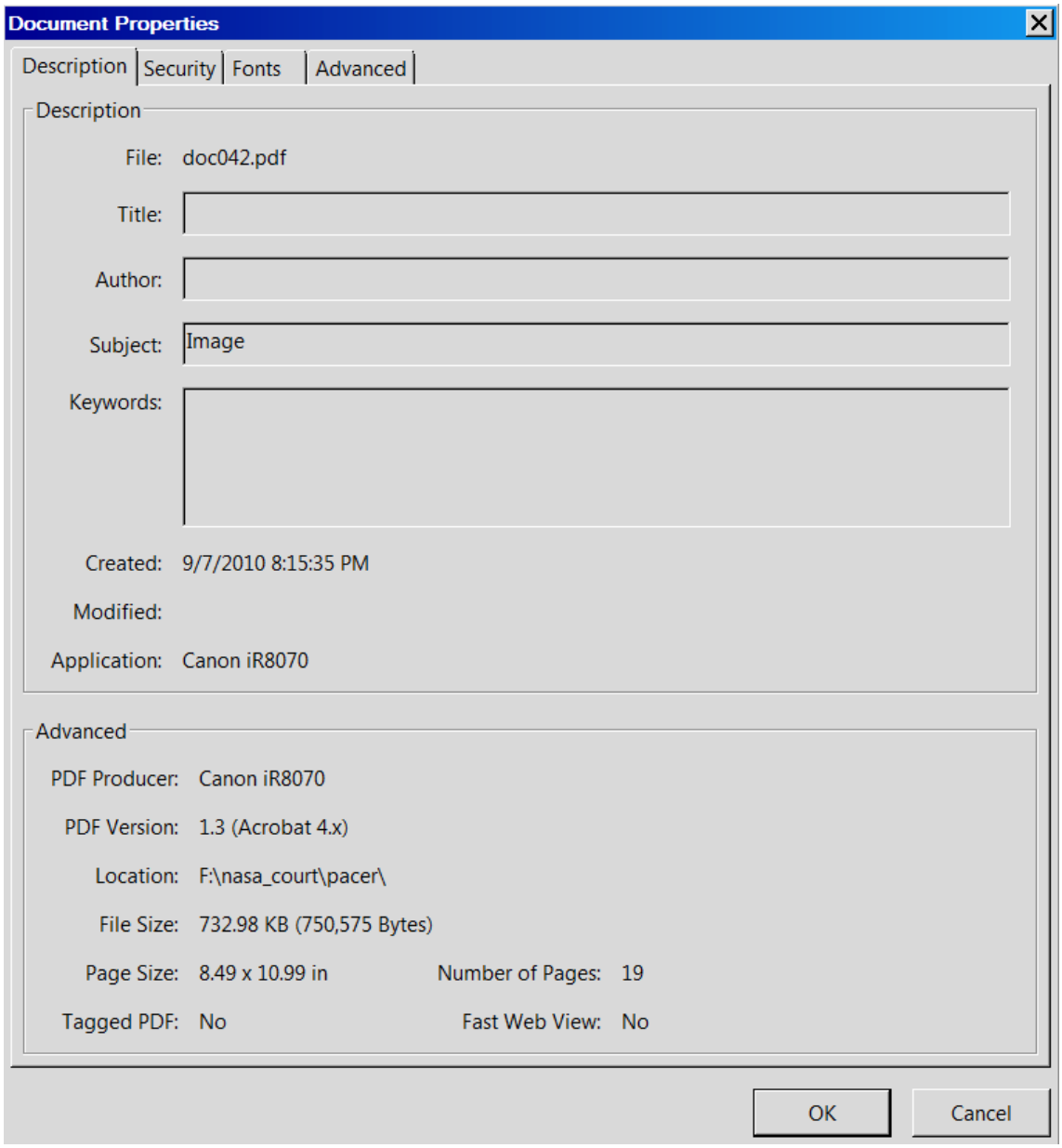
Appendix A9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Page Size: 8.49 x 10.99 in
Number of Pages: 19
Tagged PDF: No
Fast Web View: No
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Exhibit 3

Exhibit 3

Jan McNutt

International/Contract Attorney at US Army Research, Development and Engineering Command

Baltimore, Maryland Area

Current
- **International Acquisition Attorney at US Army Research, Development and Engineering Command**

Past
- Senior Attorney at NASA Headquarters
- Assistant General Counsel at International Broadcasting Bureau
- IP Attorney at Defense Information Systems Agency

4 more...

Education
- Quinnipiac School of Law
- University of Southern California
- Bucknell University

Connections **41** connections

Industry Law Practice

Jan McNutt's Summary

Transactional and Intellectual Property Law
Government Law Practice
International Affairs and Legal Policy

Jan McNutt's Specialties:

Contracting, Licensing, Government Legislation and Appropriation, Intellectual Property, International Law, Information Technology Law

Jan McNutt's Experience

International Acquisition Attorney

US Army Research, Development and Engineering Command

(Research industry)

March 2010 — Present (7 months)

Support US Army Research efforts throughout the world in support of soldiers.

Senior Attorney

NASA Headquarters

(Government Administration industry)

July 2008 — January 2010 (1 year 7 months)

Legal counsel for commercialization programs of NASA technology; intellectual property and transactional matters.

Assistant General Counsel

International Broadcasting Bureau

(Government Administration industry)

March 2004 — July 2008 (4 years 5 months)

Contracting, IP, Appropriations and Legislation Counsel for Government agency overseeing Voice of America.

IP Attorney

Defense Information Systems Agency
(Information Technology and Services industry)
April 2000 — March 2004 (4 years)

Technology counsel for Defense Department's agency for networking and telecommuncations.

Attorney Advisor

U.S. Coast Guard R&D Center
(Research industry)
June 1995 — April 2000 (4 years 11 months)

Transactional and Intellectual Property Attorney for Research and Development Center specializing in maritime, security and law enforcement research.

Contract Attorney, US Army Contracting Command, Europe

US Army
(Government Agency; 10,001 or more employees; Military industry)
June 1990 — June 1995 (5 years 1 month)

Government procurement attorney in Frankfurt, Germany

Attorney-Advisor

U.S. Army Corps of Engineers, NY District
(Government Administration industry)
April 1988 — June 1990 (2 years 3 months)

Government Procurement attorney for Army Corps of Engineers overseeing 1.5 billion dollars of new construction in upper New York State.

Associate

Klein & Vibber, PC
(Law Practice industry)
July 1985 — April 1988 (2 years 10 months)

New York law firm dealing in patent, trademark and unfair competition law.

Jan McNutt's Education

Quinnipiac School of Law
J.D , Law , 1982 — 1984

University of Southern California
M.A , International Relations , 1977 — 1979

Bucknell University
B.A , Political Science , 1971 — 1975

Exhibit 4

Exhibit 4

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Exhibit 5

Exhibit 5

Introduction

Enacted in 1966, and taking effect on July 5, 1967, the Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.[1] The FOIA thus established a statutory right of public access to Executive Branch information in the federal government.[2]

The United States Supreme Court has explained that "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."[3] The "FOIA is often explained as a means for citizens to know 'what their Government is up to.'"[4] The Supreme Court stressed that "[t]his phrase should not be dismissed as a convenient formalism."[5] Rather, "[i]t defines a structural necessity in a real democracy."[6] As President Obama has declared, "[a] democracy requires accountability, and accountability requires transparency."[7] The FOIA "encourages accountability through transparency."[8]

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[1] 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

[2] See John Doe Agency v. John Doe Corp., 493 U.S. 146, 150 (1989) ("This Court repeatedly has stressed the fundamental principle of public access to Government documents that animates the FOIA.").

[3] NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

[4] NARA v. Favish, 541 U.S. 157, 171-72 (2004) (quoting DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)).

[5] Id. at 172.

[6] Id.

[7] Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009).

[8] Id.; accord Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009) (declaring that FOIA "reflects our nation's fundamental commitment to open government"), available at http://www.usdoj.gov/ag/foia-memo-march2009.pdf.

Exemption 5

Exemption 5 of the Freedom of Information Act protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."[1] Courts have construed this somewhat opaque language[2] to "exempt those documents, and only those documents that are normally privileged in the civil discovery context."[3]

When administering the FOIA, it is important to first note that the President and Attorney General have issued memoranda to all agencies emphasizing that the FOIA reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure.[4] (For a discussion of these memoranda, see Procedural Requirements, President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines, above.)

Although originally it was "not clear that Exemption 5 was intended to incorporate every privilege known to civil discovery,"[5] the Supreme Court subsequently made it clear that the coverage of Exemption 5 is quite broad, encompassing both statutory privileges and those commonly recognized by case law, and that it is not limited to those privileges explicitly

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[1] 5 U.S.C. § 552(b)(5) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

[2] See, e.g., DOJ v. Julian, 486 U.S. 1, 19 n.1 (1988) (Scalia, J., dissenting and commenting on a point not reached by majority) (discussing "most natural reading" of threshold and "problem[s]" inherent in reading it in that way).

[3] NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975); see FTC v. Grolier Inc., 462 U.S. 19, 26 (1983); Martin v. Office of Special Counsel, 819 F.2d 1181, 1184 (D.C. Cir. 1987).

[4] Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009); accord Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009) [hereinafter Attorney General Holder's FOIA Guidelines], available at http://www.usdoj.gov/ag/foia-memo-march2009.pdf; see *FOIA Post*, "OIP Guidance: President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines - Creating a New Era of Open Government" (posted 4/17/09).

[5] Fed. Open Mkt. Comm. v. Merrill, 443 U.S. 340, 354 (1979).

26(b)(4),[279] which limits the discovery of reports prepared by expert witnesses.[280] The document at issue in Hoover was an appraiser's report prepared in the course of condemnation proceedings.[281] In support of its conclusions, the Fifth Circuit stressed that such a report would not have been routinely discoverable and that premature release would jeopardize the bargaining position of the government.[282]

In 2004, in Judicial Watch, Inc. v. DOJ,[283] the D.C. Circuit applied the presidential communications privilege under Exemption 5 of the FOIA to protect Department of Justice records regarding the President's exercise of his constitutional power to grant pardons.[284] This privilege, which protects communications among the President and his advisors, is unique among those recognized under Exemption 5 of the FOIA in that it is "'inextricably rooted in the separation of powers under the Constitution.'"[285] Although similar to the deliberative process privilege, it is broader in its coverage because it "'applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones.'"[286] However, the D.C. Circuit noted that the privilege is limited to "documents 'solicited and received' by the President or his immediate White House advisers who have 'broad and significant responsibility for investigating and formulating the advice to be given to the President.'"[287]

Subsequent to this decision, several other cases have further explored the contours of this privilege. These decisions have rejected claims that (1) the privilege must be invoked

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[279] Fed. R. Civ. P. 26(b)(4).

[280] Hoover, 611 F.2d at 1141.

[281] Id. at 1135.

[282] Id. at 1142; cf. Chem. Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. 114, 118-19 (D.D.C. 1984) (observing that Rule 26(b)(4) provides parallel protection in civil discovery for opinions of expert witnesses who do not testify at trial).

[283] 365 F.3d 1108 (D.C. Cir. 2004).

[284] Id. at 1114.

[285] Id. at 1113 (quoting United States v. Nixon, 418 U.S. 683, 708 (1974)).

[286] Id. (quoting In re Sealed Case, 121 F.3d at 745); see also Elec. Privacy Info. Ctr. v. DOJ, 584 F. Supp. 2d 65, 81 (D.D.C. 2008) (citing In re Sealed Case on greater breadth of presidential communications privilege).

[287] Judicial Watch, 365 F.3d at 1114 (quoting In re Sealed Case, 121 F.3d at 752); see Ctr. for Biological Diversity v. OMB, No. 07-04997, 2009 WL 1246690, at *8 (N.D. Cal. May 5, 2009) (protecting "any document which is a draft of a presentation or memorandum for the President or his senior advisors[,]" but not intra-agency communications pertaining to such documents); Elec. Privacy Info. Ctr., 584 F. Supp. 2d at 80-81 (citing In re Sealed Case and protecting documents that were either received by President or his immediate advisors).

Exhibit 6

Exhibit 6

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No.C-07-4997 MHP

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

vs.

OFFICE OF MANAGEMENT AND BUDGET,

Defendant.

_____/

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter having been referred to Magistrate Judge Bernard Zimmerman pursuant to Federal Rule of Civil Procedure 72(b) and Civil Local Rule 72-3 in accordance with 28 U.S.C. section 636(b)(1)(B) and (C) for the purpose of conducting an *in camera* review of documents withheld by defendants pursuant to privileges asserted under the Freedom of Information Act, 5 U.S.C. sec. 552, and a report and recommendation having been filed on August 25, 2009, and no objections having been filed thereto, and the parties advising the court that they do not intend to file objections,

IT IS HEREBY ORDERED that the foregoing Report and Recommendation is adopted in its entirety and the Recommendation determining that certain of the reviewed documents be disclosed, said documents shall be disclosed within fifteen (15) days of the date of this order if that has not already been accomplished.

Date: November 2, 2009

MARILYN HALL PATEL
United States District Court Judge
Northern District of California

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney

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San Francisco, California 94102
Telephone: (415) 436-7322
Facsimile: (415) 436-6748
Email: michael.t.pyle@usdoj.gov

Attorneys for Defendant Office of Management and Budget

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MILLS LEGAL CLINIC
Stanford Law School
Crown Quadrangle
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Stanford, CA 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Justin Augustine (CSBN 235561)
Vera Pardee (CSBN 106146)
CENTER FOR BIOLOGICAL DIVERSITY
351 California Street, Suite 600
San Francisco, CA 94104
Phone: (415) 436-9682
Facsimile: (415) 436-9683

Attorneys for Plaintiff Center for Biological Diversity

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit organization, Plaintiff, v. THE OFFICE OF MANAGEMENT AND BUDGET, Defendant.	No. C 07-4997 MHP **STIPULATION AND ~~[PROPOSED]~~ ORDER APPROVING SETTLEMENT AND DISMISSAL OF PLAINTIFF'S CLAIMS**

Plaintiff Center for Biological Diversity ("the Center") and Defendant Office of Management and Budget ("OMB"), through their undersigned counsel, enter into this Settlement in order to fully resolve this litigation and the Center's claim for attorneys' fees, expenses and costs generated in connection with this litigation.

The parties agree as follows:

1. Defendant will pay to the Center, by means of an electronic payment to a bank account to be designated by the Center, the amount of $175,000.00 to cover attorneys' fees, expenses and costs of all counsel pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E). This payment is full and final payment for all attorneys' fees, expenses and costs. This payment is inclusive of any interest. If any withholding or income tax liability is imposed upon Plaintiff or Plaintiff's counsel based on payment of the settlement sum as set forth herein, Plaintiff and its counsel shall be solely responsible for paying any such liability.

2. Defendant shall make payment to the Center no later than thirty days after the date that the Court approves this Stipulation. Defendant further agrees to make all reasonable efforts to process and cause payment to be made to the Center as soon as possible.

3. Contingent upon receipt of payment pursuant to Paragraph 1 above, Plaintiff hereby (a) releases Defendant from any past, present or future claims for attorneys' fees, expenses or costs in connection with this litigation and (b) dismisses with prejudice this litigation and all claims against Defendant relating to the FOIA request at issue in this litigation.

4. The Court shall retain jurisdiction regarding enforcement of Defendant's agreement to make the payment pursuant to Paragraph 1 above.

5. This Stipulation is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

6. No party is making an admission of liability or fault to any other party and nothing in this Stipulation shall be construed as an admission of liability or fault.

7. This Stipulation may be pled as a full and complete defense to any action or other proceeding in which any party seeks attorneys' fees, expenses or costs generated in this litigation.

8. Plaintiff and its current counsel expressly agree that neither it nor any of its current or former attorneys may make any claim for attorneys' fees, expenses or costs generated in this litigation against Defendant, the United States, their agents, servants or employees.

Respectfully submitted,

DATED: February 4, 2010 By: /s/
VERA PARDEE
Attorneys for Plaintiff

JOSEPH P. RUSSONIELLO
United States Attorney

DATED: February 4, 2010 By: /s/
MICHAEL T. PYLE
Assistant United States Attorney
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: February 8, 2010

HON. MARILYN H[illegible]
United St[illegible]

Exhibit 7

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

NTP, INC., Plaintiff, v. RESEARCH IN MOTION, LTD., Defendant.	Civil Action Number 3:01CV767-JRS

MEMORANDUM OPINION

THIS MATTER comes before the Court on Research in Motion, Ltd.'s ("RIM") Motion for Stay of Proceedings Pending Reexamination of NTP, Inc.'s Patents-in-Suit, filed on November 10, 2005. For the reasons discussed herein, RIM's Motion for Stay of Proceedings is hereby DENIED.

I.

A. Brief Procedural History

Plaintiff NTP, Inc. ("NTP") filed suit against RIM in this Court on November 13, 2001, alleging that several dozen system and method claims from its patents-in-suit had been infringed by RIM's BlackBerry wireless email devices and services. Drawn out discovery disputes, claim construction issues, multiple motions for summary judgment, countless pre-trial motions, and many evidentiary objections set the tone for a complex, contentious path toward a resolution of this case. Numerous time extensions were granted to the parties in the months leading up to trial.

Nearly one year after the Complaint was filed, a thirteen-day jury trial commenced on November 4, 2002. On November 21, 2002, the jury returned a verdict finding direct, induced, and contributory infringement by RIM on all of NTP's asserted claims. Shortly thereafter, RIM moved

for a judgment as a matter of law or, in the alternative, a new trial. After denying both requests, this Court entered its final judgment in NTP's favor on August 5, 2003. Apart from monetary damages, the Court entered a permanent injunction against RIM, which was stayed pending RIM's appeal to the United States Court of Appeals for the Federal Circuit.[1]

On August 2, 2005, the Federal Circuit issued its ruling which affirmed-in-part, reversed-in-part, and vacated-in-part this Court's judgment. See NTP, Inc. v. Research in Motion, Ltd., 418 F.3d 1282, 1326 (Fed. Cir. 2005). In analyzing the case on remand, this Court must now consider what effect, if any, the Court's misconstruction of the "originating processor" term might have had on the jury's assessment of damages and on the scope of the injunction.

B. RIM's Motions to Stay the Proceedings

Over the course of this litigation, at both the trial and appellate levels, RIM has moved on four separate occasions to stay the proceedings based at least in part on the ongoing reexamination of the patents-in-suit by the United States Patent and Trademark Office (the "PTO").[2] RIM's first three attempts were unsuccessful. This Court chose not to grant RIM's first Motion to Stay, which was finally deemed moot on August 5, 2003, after the permanent injunction was stayed pending RIM's appeal to the Federal Circuit. The Federal Circuit denied RIM's second Motion to Stay on October 29, 2003, well over a year *before* issuing its final ruling. Most recently, the Federal Circuit denied RIM's third Motion to Stay[3] on October 21, 2005, over two months *after* issuing its ruling.

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[1] RIM filed its Notice of Appeal on August 29, 2003.

[2] In January 2003, the PTO announced that it would begin to reexamine several of the patents-in-suit.

[3] RIM's third such motion was styled as a "Motion to Stay Issuance of the Mandate Pending Filing and Disposition of Petition for Writ of Certiorari." Although RIM's brief in support mainly

After denying RIM's third Motion to Stay, the Federal Circuit issued a mandate to this Court to begin final remand proceedings.

The Motion presently before the Court is RIM's fourth attempt to stay the proceedings. In this Motion, echoing its previous requests, RIM moves the Court "to stay proceedings in this litigation until the . . . [PTO] issues its final actions on its reexaminations of the patents-in-suit." RIM's Mem. Supp. 1. RIM believes that the PTO will begin to issue final actions on its reexaminations of the patents-in-suit in the next few months and contends that it is "highly likely" that the result of the PTO's reexamination proceedings will be to invalidate the patents-in-suit. Id. As such, RIM argues that considerations of judicial economy and fairness weigh in favor of issuing a stay of the proceedings.

II.

The question before this Court is whether or not these proceedings, which must be conducted pursuant to the Federal Circuit's mandate, should be stayed pending the PTO's reexamination of several of the patents-in-suit, a process of uncertain duration.

It is well-settled law that a district court may exercise its discretion when ruling on a motion to stay proceedings pending reexamination of the patents-in-suit by the PTO. See Viskase Corp. v. Am. Nat'l Can Co., 261 F.3d 1316, 1328 (Fed. Cir. 2001). A court is under no obligation to delay its own proceedings by yielding to ongoing PTO patent reexaminations, regardless of their relevancy to infringement claims which the court must analyze. See id. ("The [district] court is not required to stay judicial resolution in view of the [PTO] reexaminations."); see also Medichem, S.A. v.

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discussed a jurisdictional issue, RIM did present much of the same "stay pending PTO reexaminations" logic as was argued in support of the other two motions.

Rolabo, S.L., 353 F.3d 928, 936 (Fed. Cir. 2003) ("[O]n remand, a stay of proceedings in the district court pending the outcome of the parallel proceedings in the PTO remains an option within the district court's discretion.") (stated in the context of reissue proceedings for interfering patents before the Board of Patent Appeals and Interferences); Patlex Corp. v. Mossinghoff, 758 F.2d 594, 602–03 (Fed. Cir. 1985) (recognizing judicial discretion in stay determinations for patent proceedings).

A. The Federal Circuit's Guidance

Looking to the most recent and relevant case law precedent in the Federal Circuit, the Court finds the Viskase case particularly useful. When juxtaposed with the circumstances surrounding the instant Motion, the Viskase case bears several important similarities. In Viskase, the PTO began a reexamination of the patents-in-suit after the trial court had already found infringement. Like RIM, the infringing party in Viskase moved the district court to stay the proceedings based partly on the conclusions the infringing party predicted the PTO would reach after the reexamination. The district court declined to impose a stay, and the Federal Circuit affirmed the lower court's decision. See 261 F.3d at 1327–28.

As NTP emphasizes in its Memorandum in Opposition, the PTO reexamination proceedings in Viskase were in more advanced stages than the PTO's ongoing reexamination of NTP's patents-in-suit. The Court is not persuaded that the PTO will issue final actions in RIM's favor "within the next few months," as RIM asserts. RIM's Mem. Supp. 6. The PTO has not even finished issuing all of its first actions. Furthermore, NTP will have the opportunity and has already indicated its intention to respond to the first actions. The PTO, after considering NTP's responses, will then issue another office action which may or may not be "final." Even in the unlikely event that all final office actions were taken in the next few months, NTP, if not satisfied, could appeal the PTO's findings.

Reality and past experience dictate that several years might very well pass from the time when a final office action is issued by the PTO to when the claims are finally and officially "confirmed" after appeals. See, e.g., In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359 (Fed. Cir. 2004) (affirming the claim construction of the Board of Patent Appeals and Interferences in a case where, after numerous rehearing requests and appeals, the PTO's findings were not confirmed until ten years after a reexamination was first requested).

B. The History and Present Status of This Litigation

Perhaps the most influential tool the Court can use to analyze RIM's Motion is to simply trace the history of this litigation. NTP and RIM participated in a lengthy, complex, fair, and fully exhaustive trial process at the end of which a jury of the parties' peers found that RIM had infringed NTP's patents-in-suit. RIM had the opportunity to appeal and did so. Two years later, the Federal Circuit, although reversing and vacating certain aspects of this Court's judgment, affirmed several of the findings of infringement and issued a mandate directing the Court to begin proceedings on the remanded issues.

RIM now seeks to halt the proceedings yet again through its most recent Motion to Stay. This Court and the Federal Circuit have already denied similar, and in some ways identical, motions by RIM three times—and correctly so. Nothing has changed that would make the Court more inclined to grant RIM's request. If anything, the Federal Circuit's direct mandate to this Court to proceed on remand so that this litigation may be quickly resolved would make RIM's burden on this Motion even heavier.

The likely duration and result of the PTO's reexamination proceedings and any subsequent (and likely) appeals are in dispute. RIM, turning a blind eye to the many steps that must still be

taken before a final determination can be issued by the PTO and confirmed, suggests that the patents-in-suit will be invalidated in a matter of *months*. NTP, on the other hand, insists on the likelihood of the opposite result and gives a reality-based estimated time frame of *years*. Regardless of which party's predictions this Court might adopt, any attempt at suggesting a likely time frame and outcome of the PTO reexamination process is merely speculation. This Court cannot and will not grant RIM the extraordinary remedy of delaying these proceedings any further than they already have been based on conjecture.

III.

The Court recognizes the rights of a patent holder whose patents have been infringed. Indeed, the essence of patent protection is that a party legally deemed to have infringed one or more patents shall be liable to the patent holder for damages. Valid patents would be rendered meaningless if an infringing party were allowed to circumvent the patents' enforcement by incessantly delaying and prolonging court proceedings which have already resulted in a finding of infringement.

The Court intends to comply with the Federal Circuit's mandate and move this litigation forward so as to bring closure to this case on remand. Derailing these proceedings when a resolution is in sight would be ill-advised at best.

For these reasons, RIM's Motion for Stay of Proceedings Pending Reexamination of NTP, Inc.'s Patents-in-Suit is hereby DENIED.

An appropriate Order shall issue.

ENTERED this 30th day of November, 2005

/s/
James R. Spencer
UNITED STATES DISTRICT JUDGE

Exhibit 8

Exhibit 8

Enterprise Mobility

RIM, NTP Settle Case: BlackBerry Service Is Safe

By: Carmen Nobel
2006-03-03
Article Rating: ☆☆☆☆☆ / 0
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There are user comments on this Enterprise Mobility story.

Updated: BlackBerry maker Research In Motion and patent-holding company NTP announce that they have entered into a settlement agreement and a license that will end the litigation that had been threatening to shu

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Its settled, and your BlackBerry is safe.

BlackBerry maker Research In Motion and patent-holding company NTP on March 3 announced that both parties have entered into a settlement agreement and a license that will end the patent litigation that had been threatening to shut down BlackBerry service in the United States.

Under the terms of the settlement, RIM will make a one-time payment to NTP of $612.5 million. In return, NTP has granted RIM a license that will let RIM continue its BlackBerry-related wireless business, according to officials at both companies.

"We are pleased to have reached an amicable settlement with RIM," Donald Stout, co-founder of NTP, said in a statement. "We believe that the settlement is in the best interests of all parties, including the U.S. Government and all other BlackBerry users in the United States."

The license covers all the current wireless e-mail patents involved in the litigation as well as any future NTP patents, officials said.

The resolution also protects all the wireless carriers and channel partners who sell BlackBerry products, as well as any other hardware makers who have licensed BlackBerry software for use in their own devices.

NTP sued RIM for patent infringement on nine wireless e-mail patents in 2001.

U.S. District Judge James Spencer ruled in favor of NTP in 2003, instructing RIM to halt its sales of BlackBerry devices and services in the United States until NTPs patents run out in 2012. Spencer stayed the injunction, though, pending appeal. The Supreme Court eventually declined to hear RIMs case. Spencer held a remand hearing on Feb. 24, ending that hearing with an appeal that the two sides settle.

Click here to read more about the BlackBerry patent infringement case.

"I must say Im surprised that you have left this important and incredibly significant decision to the court," Spencer said at the hearing. "The courts decision will be imperfect. The case shouldve been settled, but it hasnt been. So I have to deal with reality."

As recently as a week before the settlement, RIM officials insisted that settlement was not an option, based on the terms NTP had offered up until then.

"Theyve never offered us a full license, so Im kind of hamstrung," said Jim Balsillie, chairman and co-CEO of RIM, in a Feb. 24 interview with eWEEK. "Its like: Jim, would you be happy being 6 feet, 6 inches tall? Itd be nice, but its not an option in this lifetime."

On March 3, though, he said he was comfortable with the terms of the deal.

"There was the fundamental reality that uncertainty isnt enjoyed," Balsillie said in a conference call following the settlement announcement.

"Once we could finally get a scope of license that protected our whole ecosystem, and a fixed amount that didnt have residual costs … it made sense to settle."

The settlement is a relief to the millions of BlackBerry customers who faced the possibility of an injunction.

"Im glad they reached a settlement so the customers dont have to bear the burden of their squabble," said Robert Rosen, CIO of a major BlackBerry customer, the National Institute of Arthritis and Musculoskeletal and Skin Diseases at the National Institutes of Health, in Bethesda, Md.

Robert Reilly, president of the Professional Inventors Alliance in Washington, said he believes RIM is the bad guy in this case, regardless of how much Americans love their BlackBerry devices.

"I am outraged by RIMs conduct and think that they should have paid far more," he said. "It is well documented that most important inventions come from individual inventors, while large companies tend to only produce small incremental inventions. When patent pirates bankrupt or literally run inventors into their graves, the costs to society are much greater than what the inventor bears."

"I am glad that the ordeal is over for Campanas family and associates," Reilly said. (NTP co-founder Thomas Campana died in June 2004 at the age of 57.)

Next Page: But is the case really over?

Really Over?">

But the case also has brought concerns of future drawn-out patent disputes.

"Its great to have moved beyond the legal battle," said John Halamka, CIO of Harvard Medical School and Caregroup Health Systems, a Boston-area hospital consortium that supports some 800 BlackBerry devices.

"However, I hope this settlement does not lead to more suits of this nature. Innovative companies could spend more time in court than on creating new products."

This is not the first time RIM and NTP have announced a settlement. In 2005, the two companies announced a settlement deal of $450 million, but the deal fell apart when the two companies could not agree to terms.

And Judge Spencers case dismissal included an interesting phrase: "ORDER that this matter is settled, and by stipulation of the parties, this action is hereby DISMISSED WITHOUT PREJUDICE," reads a March 3, 2006, entry in his court docket.

"When you do something without prejudice it usually indicates that it is not final," said Neil Smith, a patent attorney at Sheppard Mullin Richter & Hampton LLP, in San Francisco. "It doesnt mean that it is not binding, but its not as binding as it could be."

However, Balsillie maintained that the new deal is final.

"We know we took one for the team, but this is behind us," he said.

Throughout the past several months of the dispute, RIM had been touting a technical backup plan that customers could implement in case of an injunction.

While RIM officials said the workaround plan did not infringe on any patents, and that "dozens" of customers had tested it out, there was still fear surrounding it.

"Customers said, We liked the workaround, but we dont enjoy this uncertainty," Balsillie said. "At that point, if you can get a fixed-rate payment with no residual ... a smart person just puts it behind him. When that

opportunity was able to be had we just took it."

Indeed, the NTP dispute apparently caused some prospective RIM customers to hold back. Also on March 3, RIM said the number of new subscribers would be in the range of 620,000 to 630,000 for the fiscal fourth quarter, down from the companys December projection of 700,000 to 750,000.

RIM also cut its revenue outlook for its fiscal fourth quarter. The company said revenue will be $550 million to $560 million, compared to its previous projection of $590 million to $620 million given in December. RIM said software and service revenue was lower than expected.

As for the bottom line, RIM said it sees earnings of 64 cents a share to 66 cents a share, well below the companys expectation for earnings between 76 cents a share to 81 cents a share. Those earnings results exclude RIMs NTP settlement.

Editors Note: *This story has been updated to include comments from NTP and RIM, customer and analyst reaction, and information about a previous settlement, and will continue to be updated as events warrant.*


Check out eWEEK.coms for the latest news, reviews and analysis on mobile and wireless computing.

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Exhibit 9

Exhibit 9

Tr... × http://portal.us...AIRPrintServlet ×

07/702,939 ELECTRONIC MAIL SYSTEM WITH RF COMMUNICATIONS TO MOBILE PROCESSORS AND METHOD OF OPERATION THEREOF

Select New Case | Application Data | Transaction History | Image File Wrapper | Continuity Data | Fees | Published Documents | Address & Attorney/Agent

This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.

Available Documents

Mail Room Date	Document Code	Document Description	Page Count	Select All / Start Download / Clear All
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	1	☐
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	1	☐
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	2	☐
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	2	☐
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	1	☐
07-12-2010	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	1	☐
07-22-2008	SOL.NTC.SUIT	Report on the filing or determination of an action regarding a patent.	17	☐
11-25-2003	PETDEC	Petition Decision	11	☐
11-10-2003	R3.73B	Assignee showing of ownership per 37 CFR 3.73(b).	9	☐
07-31-2003	RXPET.	Receipt of Petition in a Reexam	16	☐
06-12-2003	PETDEC	Petition Decision	5	☐
06-06-2003	PETDEC	Petition Decision	10	☐
05-20-2003	RXOR.T	Reexam Timely Patent Owner's Stmnt in Resp to Order	4	☐
05-06-2003	RXPET.	Receipt of Petition in a Reexam	17	☐
07-25-1995	RXPATENT	Copy of patent for which reexamination is requested	1	☐
06-09-1995	RXMISC	Reexam - Miscellaneous Action	15	☐
06-09-1995	RXMISC	Reexam - Miscellaneous Action	14	☐
05-02-1995	RXMISC	Reexam - Miscellaneous Action	3	☐
03-15-1995	A...	Amendment/Req. Reconsideration-After Non-Final Reject	20	☐
02-07-1995	NOA	Notice of Allowance and Fees Due (PTOL-85)	4	☐
02-07-1995	892	List of references cited by examiner	1	☐

Exhibit 10

Exhibit 10

Jed Margolin

From: "Jed Margolin" <jm@jmargolin.com>
To: <denise.young-1@nasa.gov>; <hq-foia@nasa.gov>; <stephen.mcconnell-1@nasa.gov>
Sent: Tuesday, July 20, 2010 10:43 AM
Subject: FOIA Request

Dear NASA,

This request is made pursuant to the Freedom of Information Act.

1. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and Reza Zandian.

Mr. Zandian has been known to also use the following names:

Gholam Reza Zandian
Reza Jazi
J. Reza Jazi
G. Reza Jazi
Gholamreza Zandian Jazi.

2. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and Scott J. Bornstein (and/or the law firm of Greenberg Traurig).

3. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and the law firm of John Peter Lee LTD (Las Vegas) including John Peter Lee LTD's employees and/or agents.

Costs:

I claim the journalist exemption. These documents are material to the article/blog I am writing called “How NASA Treats Independent Inventors” at www.jmargolin.com/nasa/nasa.htm

Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430
775-847-7845

Exhibit 11

Exhibit 11

Jed Margolin

From: "HQ-FOIA" <hq-foia@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Saturday, July 24, 2010 9:26 AM
Subject: RE: 10-HQ-F-01398 (clarification)

Mr. Jed Margolin:

This is in response to your request received on July 20, 2010 at the NASA Headquarters FOIA Requester Service Center, pursuant to the Freedom of Information Act (FOIA).

Your request does not clearly define a request for specific NASA agency records, which are maintained and controlled by this agency.

In accordance with the FOIA and our agency's FOIA regulation, we ask you to provide a specific request for documents within a system of records controlled and maintained by this agency.

We ask you to respond within 10 days of this email.

Sincerely,

Denise Young
HQ FOIA Officer

From: Jed Margolin [mailto:jm@jmargolin.com]
Sent: Tuesday, July 20, 2010 1:44 PM
To: Young, Denise (HQ-NG000); HQ-FOIA; stephen.mcconnell-1@nasa.gov
Subject: FOIA Request

Dear NASA,

This request is made pursuant to the Freedom of Information Act.

1. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and Reza Zandian.

Mr. Zandian has been known to also use the following names:

Gholam Reza Zandian
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G. Reza Jazi
Gholamreza Zandian Jazi.

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3. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and the law firm of John Peter Lee LTD (Las Vegas) including John Peter Lee LTD's employees and/or agents.

Costs:

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Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430
775-847-7845

Exhibit 12

Exhibit 12

Jed Margolin

From: "Jed Margolin" <jm@jmargolin.com>
To: "HQ-FOIA" <hq-foia@nasa.gov>
Cc: <foiaoig@hq.nasa.gov>
Sent: Thursday, July 29, 2010 9:15 AM
Subject: Re: 10-HQ-F-01398 (clarification)

Dear Ms. Young.

Your assertion that my FOIA request "does not clearly define a request for specific NASA agency records, which are maintained and controlled by this agency" is without merit.

My request is very specific and provides numerous specific keywords and search terms.

Your use of the phrase "which are maintained and controlled by this agency" suggests that you have the documents I requested but have transferred custody to an entity that is not NASA in order to give yourself plausible deniability.

If you did that, what entity did you transfer the documents to?

Have you spent the several days between my July 20 FOIA request and your July 24 email transferring the documents to the National Archives and Records Administration (see 36 CFR 1228.270 and 36 CFR 1234.32(a)).?

Or, did you destroy the documents in defiance of the Federal Records Act?

Your statement:

> " In accordance with the FOIA and our agency's FOIA regulation, we ask you to provide a specific request for documents within a system of records controlled and maintained by this agency"

is absurd.

You are suggesting that you do not have the documents, yet you have not done a search. You are also demanding that I have intimate knowledge of the "system of records controlled and maintained by this agency."

The Freedom of Information Act does not require that I have intimate knowledge of the "system of records controlled and maintained by this agency."

That's your job. Please do it.

In *Vaughn v. Rosen* 484 F2d 820, 157 U.S.App.D.C. 340 the Court explained:

> The Freedom of Information Act was conceived in an effort to permit access by the citizenry to most forms of government records. In essence, the Act provides that all documents are available to the public unless specifically exempted by the Act itself.10 This court has

> repeatedly stated that these exemptions from disclosure must be construed narrowly, in such a way as to provide the maximum access consonant with the overall purpose of the Act.11 By like token and specific provision of the Act, when the Government declines to disclose a document the burden is upon the agency to prove de novo in trial court that the information sought fits under one of the exemptions to the FOIA.12 Thus the statute and the judicial interpretations recognize and place great emphasis upon the importance of disclosure.
>
> In light of this overwhelming emphasis upon disclosure, it is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information. Obviously the party seeking disclosure cannot know the precise contents of the documents sought; secret information is, by definition, unknown to the party seeking disclosure. In many, if not most, disputes under the FOIA, resolution centers around the factual nature, the statutory category, of the information sought.

{Emphasis added}

The Court trumps NASA's FOIA regulations.

You might start looking for the documents I requested in the NASA Office of the General Counsel's email. But don't stop there. I'm sure there are also other places to look. It's your job to know where to look.

Jed Margolin

==========

> ----- Original Message -----
> **From:** HQ-FOIA
> **To:** Jed Margolin
> **Sent:** Saturday, July 24, 2010 9:26 AM
> **Subject:** RE: 10-HQ-F-01398 (clarification)
>
> Mr. Jed Margolin:
>
> This is in response to your request received on July 20, 2010 at the NASA Headquarters FOIA Requester Service Center, pursuant to the Freedom of Information Act (FOIA).
>
> Your request does not clearly define a request for specific NASA agency records, which are maintained and controlled by this agency.
>
> In accordance with the FOIA and our agency's FOIA regulation, we ask you to provide a specific request for documents within a system of records controlled and maintained by this agency.
>
> We ask you to respond within 10 days of this email.
>
> Sincerely,

Denise Young
HQ FOIA Officer

From: Jed Margolin [mailto:jm@jmargolin.com]
Sent: Tuesday, July 20, 2010 1:44 PM
To: Young, Denise (HQ-NG000); HQ-FOIA; stephen.mcconnell-1@nasa.gov
Subject: FOIA Request

Dear NASA,

This request is made pursuant to the Freedom of Information Act.

1. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and Reza Zandian.

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Reza Jazi
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Gholamreza Zandian Jazi.

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Costs:

I claim the journalist exemption. These documents are material to the article/blog I am writing called "How NASA Treats Independent Inventors" at www.jmargolin.com/nasa/nasa.htm

Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430
775-847-7845

Exhibit 13

Exhibit 13

National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of:

August 16, 2010

Mr. Jed Margolin
1981 Empire Road
Reno, NV 89521-7430

REF: FOIA Request 10-HQ-F-01398

Dear Mr. Jed Margolin:

Thank you for your Freedom of Information Act (FOIA) request dated July 20, 2010 and received in our office on July 20, 2010. Your request was for:

1. Documents containing or referring to communications between NASA (and/or its employees and/or agents) and Reza Zandian.

   Mr. Zandian has been known to also use the following names:
   Gholam Reza Zandian
   Reza Jazi
   J. Reza Jazi
   G. Reza Jazi
   Gholamreza Zandian Jazi.

2. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and Scott J. Bornstein (and/or the law firm of Greenberg Traurig).

3. I would like all documents containing or referring to communications between NASA (and/or its employees and/or agents) and the law firm of John Peter Lee LTD (Las Vegas) including John Peter Lee LTD's employees and/or agents.

Since we must search for and collect documents from offices other than the office processing the request, we are availing ourselves of the 10 working day extension of response time provided in the NASA FOIA regulations (14 CFR § 1206.101 (f)(1)).

We will send a final reply to you on or before August 31, 2010.

Sincerely,

Denise Young
Headquarters FOIA Officer

Exhibit 14

Exhibit 14

Jed Margolin

From: "Jed Margolin" <jm@jmargolin.com>
To: "HQ-FOIA" <hq-foia@nasa.gov>
Cc: "MARTIN, PAUL K. (HQ-WAH10)" <paul.k.martin@nasa.gov>
Sent: Thursday, September 09, 2010 11:11 AM
Attach: nasa_foia3_resp.pdf
Subject: Re: 10-HQ-F-01398

Dear Ms. Young.

This is regarding FOIA Request 10-HQ-F01398.

It is now past your promised deadline for responding to my FOIA request, even after you gave yourself more time.

What are your intentions?

Regards,

Jed Margolin

Exhibit 15

Exhibit 15

Jed Margolin

From: "Jed Margolin" <jm@jmargolin.com>
To: <lori.garver@nasa.gov>; "HQ-FOIA" <hq-foia@nasa.gov>; <foiaoig@hq.nasa.gov>; <Paul.K.Martin@nasa.gov>; <denise.young-1@nasa.gov>; <stella.luna-1@nasa.gov>; <LARC-DL-foia@mail.nasa.gov>; <michael.c.wholley@nasa.gov>
Sent: Monday, September 13, 2010 12:27 PM
Subject: 10-HQ-F-01398

Dear Ms. Young,

Your refusal to respond to (or even accept) my email suggests that you have been using the extension (that you unilaterally gave yourself) to destroy responsive documents.

That is what I will tell the Court.

Jed Margolin

==========

----- Original Message -----
From: Jed Margolin
To: HQ-FOIA
Cc: paul.k.martin@nasa.gov
Sent: Thursday, September 09, 2010 11:18 AM
Subject: Fw: 10-HQ-F-01398

Your email server rejected my email because it included a PDF of your letter dated August 16, 2010.

----- Original Message -----
From: Jed Margolin
To: HQ-FOIA
Cc: MARTIN, PAUL K. (HQ-WAH10)
Sent: Thursday, September 09, 2010 11:11 AM
Subject: Re: 10-HQ-F-01398

Dear Ms. Young.

This is regarding FOIA Request 10-HQ-F01398.

It is now past your promised deadline for responding to my FOIA request, even after you gave yourself more time.

What are your intentions?

Regards,

Jed Margolin

Jed Margolin

From: "MARTIN, PAUL K. (HQ-WAH10)" <paul.k.martin@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Monday, September 13, 2010 12:28 PM
Attach: ATT00343.txt
Subject: Read: 10-HQ-F-01398

Your message was read on Monday, September 13, 2010 2:28:12 PM (GMT-06:00) Central Time (US & Canada).

Jed Margolin

From: "Von Ofenheim, Bill (LARC-B703)" <bill.von.ofenheim@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Monday, September 13, 2010 12:29 PM
Attach: ATT00353.txt
Subject: Read: 10-HQ-F-01398

Your message was read on Monday, September 13, 2010 2:29:48 PM (GMT-06:00) Central Time (US & Canada).

Jed Margolin

From: "Garver, Lori B. (HQ-AB000)" <lori.garver@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Monday, September 13, 2010 12:33 PM
Attach: ATT00373.txt
Subject: Read: 10-HQ-F-01398

Your message was read on Monday, September 13, 2010 2:33:51 PM (GMT-06:00) Central Time (US & Canada).

Jed Margolin

From: "Fleming, Laraunce A. (LARC-H1)[TESSADA & ASSOC INC]" <laraunce.a.fleming@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Monday, September 13, 2010 12:52 PM
Attach: ATT00383.txt
Subject: Not read: 10-HQ-F-01398

Your message was deleted without being read on Monday, September 13, 2010 2:52:13 PM (GMT-06:00) Central Time (US & Canada).

Jed Margolin

From: "Wheeler, Carissa Smith (LARC-H1)" <carissa.s.wheeler@nasa.gov>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Monday, September 13, 2010 1:08 PM
Attach: ATT00393.txt
Subject: Read: 10-HQ-F-01398

Your message was read on Monday, September 13, 2010 3:08:43 PM (GMT-06:00) Central Time (US & Canada).

Exhibit 16

Exhibit 16

National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

September 24, 2010

Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430

Re: Freedom of Information Act Request NGC10-243

Dear Mr. Margolin:

This is in response to your Freedom of Information Act (FOIA) request of September 13, 2010, for any records sent to the National Archives by the National Aeronautics and Space Administration (NASA) Office of General Counsel in the previous three months. Your request was received in this office on September 21, 2010, and assigned tracking number NGC10-243.

A review of our records indicates that NARA received only one SF-258, Agreement to Transfer Records to the National Archives, from NASA:

- Periodic Information Series – GSFC (Miscellaneous), 2008-2010. 1 Cubic Foot.

In your request, you asked about Federal Agencies producing records in response to the FOIA. The Department of Justice's Office of Information Policy (OIP) determines the official policy for all agencies subject to the FOIA. NARA cannot speak for other agencies when they receive a FOIA request for records. Therefore, I recommend you contact them if you have concerns with agencies who are not compliant with the FOIA. You may contact them here: http://www.justice.gov/oip/oip.html

If you consider this a denial, you may appeal by writing to the Deputy Archivist (ND), National Archives and Records Administration, College Park, MD 20740 within 35 calendar days and explain why you think your request fails to meet the requirements of the FOIA. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please include the tracking number NGC10-243 in your appeal letter.

Please let us know if we may be of further service. I may be reached by phone at (301) 837-2025 or by e-mail at jay.olin@nara.gov.

Sincerely,

JAY OLIN
NARA Deputy FOIA Officer
Office of General Counsel