HOWARTH & SMITH
DON HOWARTH, State Bar No. 53783
dhowarth@howarth-smith.com
SUZELLE M. SMITH, State Bar No. 113992
ssmith@howarth-smith.com
LEE CRAWFORD-BOYD, State Bar No. 189946
lboyd@howarth-smith.com
523 West Sixth Street, Suite 728
Los Angeles, California 90014
Telephone: (213) 955-9400
Facsimile: (213) 622-0791

Attorneys for Plaintiff
LAWRENCE B. LOCKWOOD

FILED
2009 JUL 15 PM 4:03
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE B. LOCKWOOD, PANIP, LLC,

Plaintiffs,

v.

SHEPPARD, MULLIN, RICHTER &HAMPTON, LLP, JONATHAN HANGARTNER, STEVE P. HASSID,

Defendants.

CASE NO. CV09-5157 JFW (AGRx)

COMPLAINT FOR:

1) **MALICIOUS PROSECUTION IN CONNECTION WITH UNITED STATES PATENTS**
2) **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
3) **FRAUD**
4) **VIOLATION OF 18 U.S.C. §§ 1962, 1964**

DEMAND FOR JURY TRIAL

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

Introduction

1. Plaintiff Lawrence B. Lockwood is part of a vanishing tradition of small, individual, pioneer inventors in the field of electronic commerce. Working on his own, since 1979, Mr. Lockwood has been granted a dozen United States and Canadian patents in the fields of multimedia computer networking, database search and electronic commerce technologies. Between 1985 and 1989, long before the Internet explosion, Mr. Lockwood was a featured speaker at eight national, multimedia and banking conferences, and had thirty multimedia technology and electronic commerce articles published. Several of his patents teach cutting-edge technology, as demonstrated by the fact that the United States Patent and Trademark Office ("USPTO") has cited the Lockwood patent family in 750 subsequently issued U.S. patents. In addition, his patents are highly cited by foreign patent offices, such as the European Patent Office. Mr. Lockwood's patents are so integral to modern electronic commerce that they are tempting targets for infringement by larger, better-funded commercial entities. For example, in 1991, Mr. Lockwood enforced several of his patents against American Airlines, Inc.

2. After they issued in 1996 and 2001, two of Mr. Lockwood's patents, Patent No. 5,576,951 ("Patent '951") and No. 6,289,319 ("Patent '319") (the "Patents"), were being infringed and their technologies stolen by numerous companies using Mr. Lockwood's patented computerized sales systems technology to do business on the Internet. Of course, Mr. Lockwood had a right to enforce his Patents by offering licenses to the infringers or filing infringement suits in U.S. courts. In 2002, to further his property rights, Mr. Lockwood formed Plaintiff PanIP, LLC ("PanIP"), and exclusively licensed his patent portfolio to PanIP. PanIP successfully licensed the Patents as a result of an expensive and well-researched enforcement program that included PanIP filing an infringement action in the federal district court for the Southern District of California (the "Enforcement Program"). By mid-May 2003, Plaintiff Lockwood and PanIP (collectively, "Plaintiffs") had

entered into licensing relationships with over twenty-five companies, headquartered in fifteen different states, and were in negotiations with many other companies.

3. Defendant Jonathan Hangartner represented several of the parties sued in the federal infringement action, and he joined Defendant Sheppard, Mullin, Richter & Hampton ("Sheppard Mullin"), where Defendant Steve P. Hassid was also a patent attorney (collectively, "Defendants"). Sheppard Mullin, Hangartner and Hassid, together, as a part of a strategy to deny Plaintiffs the use of the Patents, intentionally abused the patent process established by the USPTO and by Congress by filing fraudulent and malicious Requests for Reexamination of the Patents (the "Fraudulent Requests"), knowing that there was no probable cause for challenging the validity of the Patents. Defendants knowingly made false and deceptive representations in their Fraudulent Requests regarding whether a certain confidential proprietary document qualified as prior art, and misrepresented what was shown in other prior art references, for the purpose of convincing the USPTO to initiate reexamination of the Patents. Lengthy and expensive reexamination of a patent, after an individual inventor has gone through the costly and arduous process of obtaining the patent in the first place, can be the death knell for the inventor, as Defendants knew well.

4. In order to gain leverage in the pending infringement litigation, Defendants took the unlawful step of filing the Fraudulent Requests based on misleading statements in complete disregard of the strict duty of candor required for attorneys licensed to practice before the USPTO. To continue profiting from their representation, using a publicity campaign to gain more clients, and to put Mr. Lockwood and PanIP out of business during the period in which the Patents would be in reexamination proceedings in which the rights under the Patents would be severely limited, Defendants conspired to wage a campaign against Plaintiffs and to solicit more funding and clients through an enterprise established solely for this purpose, PanIP Group Defense Fund, Inc. ("PGDF"). In addition, in order to solicit

funding to further its illicit purposes, which included putting Plaintiffs out of business through unlawful means, PGDF established a website, *YouMayBeNext.com*, to falsely attack the validity of Lockwood's and PanIP's licensing business, and of the Patents themselves, and to defraud the USPTO. The website stated that the purpose of PGDF was to "Stop PanIP." Defendant Hangartner stated in the press as early as 2002 that Defendants wanted to "put this guy [Lockwood] out of business," and the Defendants and PGDF used the Fraudulent Requests as a means for doing so. Defendants Sheppard Mullin and Hangartner were prominently featured on the PGDF website.

5. Defendants' strategy worked, and the filing of the Fraudulent Requests, coupled with the PGDF campaign, did in fact render Plaintiffs' Patents valueless for the more than four years that the reexamination process lasted, virtually bankrupting Mr. Lockwood and destroying the business of PanIP. With no income or resources from his life's work, Mr. Lockwood was financially coerced into dropping the Enforcement Program.

6. By the end of the reexamination process in 2007 and 2008, Plaintiffs were vindicated and the Patents were confirmed in all respects by the USPTO, further exposing the unlawful nature of the Fraudulent Requests. However, the Defendants' conduct had wreaked havoc on Plaintiffs' limited timeframe in which to use and benefit from the lawful and valid Patents, and Mr. Lockwood suffered tremendous damages during those four years of sham reexamination proceedings by having to expend significant time and money defending the Patents rather than being able to benefit from them. Since the termination of the USPTO's reexamination of Plaintiffs' Patents resolved entirely in Plaintiffs' favor, Plaintiff Lockwood has restarted his enforcement program and has reached very valuable licensing agreements on his patented technology. Defendants' actions have caused Plaintiffs to lose millions of dollars in revenues over the four years it took to undo the fraud committed on the Patent Office.

7. This suit is brought against Defendants for their intentionally wrongful conduct, in connection with United States patents, which wrongful conduct is prohibited under the federal rules and regulations of the USPTO, under California state law prohibiting malicious prosecution, intentional interference with prospective economic advantage, and fraudulent misrepresentation, as well as by 18 U.S.C. § 1962 (c), and (d), the Racketeer and Influenced Corrupt Organizations Act ("RICO").

PARTIES

8. Plaintiff Lawrence B. Lockwood is a California inventor who, during the past three decades, has obtained a dozen patents in the fields of multimedia search systems, interactive video computing terminals, as well as electronic commerce and computerized financial services. Plaintiff Lockwood actively continues to develop and file new applications in the same technology fields. He is the named inventor in, and at all relevant times has been, the owner of U.S. Patent Nos. 5,576,951 and 6,289,319 ("the Patents").

9. Plaintiff PanIP is a California Limited Liability Company doing business in California. Plaintiff Lockwood's patent portfolio was exclusively licensed to PanIP in 2002. Prior to Defendants' wrongful conduct, Mr. Lockwood was the managing member of PanIP and it had several employees. PanIP also had conducted business with law firms, accounting firms and other businesses that it employed. Prior to Defendants' wrongful conduct, PanIP had an Internet website and registered its trademark "PanIP" with the USPTO.

10. Defendant Sheppard Mullin is on information and belief a law firm which was formed as a California Limited Liability Partnership, having its principal place of business in Los Angeles County.

11. Defendant Jonathan Hangartner is on information and belief an attorney licensed to practice law in the State of California, and during times relevant to this complaint, was an associate, partner or otherwise employed by Sheppard Mullin; and

///

was acting within the course and scope of that affiliation with Sheppard Mullin with respect to the matters hereinafter alleged.

12. Defendant Steve P. Hassid is on information and belief an attorney licensed to practice law in the State of California, and during times relevant to the complaint, was an associate attorney employed by Sheppard Mullin and registered to practice before the USPTO; and was acting within the course and scope of that affiliation with Sheppard Mullin with respect to the matters hereinafter alleged.

13. Defendants agreed among themselves to use a USPTO procedure entitled "Request for Ex Parte Reexamination" to defraud the USPTO and to nullify Plaintiffs' property interests in the Patents for long enough that Plaintiffs would not be able to move forward on the Patents and potentially go bankrupt. As practitioners registered to practice before the USPTO, Defendants knew and understood that the USPTO relied on the required strict duty of candor for all practitioners before the USPTO in employing the reexamination process.

14. PanIP Group Defense Fund, Inc. ("PGDF") was an Indiana corporate entity and/or association-in-fact masterminded by Defendant Hangartner on October 29, 2002, and commissioned, operated and managed by Defendant Sheppard Mullin, from November 29, 2002 to December 5, 2006, doing business as an unlawful "enterprise" as defined under 18 U.S.C. § 1962(c), designed solely to defraud the USPTO and to deprive Plaintiffs of their rightful ownership of the Patents by violating U.S. statutes, including but not limited to 18 U.S.C. §§ 1343, 1344, and to redirect benefits to itself and to Defendants which rightfully belonged to Plaintiffs.

15. At all times mentioned herein, each Defendant was the agent of each of the other Defendants, and was acting within the course and scope of said agency.

JURISDICTION AND VENUE

16. This court has subject matter jurisdiction over this matter because the state claims for malicious prosecution, fraudulent misrepresentation, and interference with prospective economic advantage, arise under federal patent law and are subject

to the exclusive jurisdiction of the federal courts pursuant to 28 U.S.C. § 1338. The California Court of Appeal has held, regarding this dispute, that Plaintiff Lockwood's complaint for malicious prosecution, interference with prospective economic advantage and fraud "requires resolution of substantial issues of patent law, and [the complaint] is subject to the exclusive jurisdiction of the federal courts." *Lockwood v. Sheppard, Mullin, Richter & Hampton*, 173 Cal. App. 4th 675, 686-687 (2009). Jurisdiction is also proper under 28 U.S.C. § 1331 for claims arising under 18 U.S.C. §§ 1962 (c), (d), and 1964 (c).

17. Venue is proper in the Central District of California because Defendants Sheppard Mullin and Hassid reside in Los Angeles, California, all Defendants reside in California, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

18. This Court has both specific and general personal jurisdiction over each of the named Defendants because they are domiciled within the State of California and all claims arise from actions occurring within the State of California.

Facts Common to all Counts

Background of the Patents

19. In 1980, Lawrence B. Lockwood filed his first patent application, Self-Service Terminal, which issued as U.S. Patent No. 4,359,631 in 1982. In 1984, Mr. Lockwood filed his patent application for Automatic Information, Goods and Services Dispensing System that issued as U.S. Patent No. 4,567,359 in 1986. That patent was the grandparent patent of the two patents for which Defendants requested ex parte reexamination in May of 2003.

20. Plaintiff Lockwood's Patent No. 5,576,951 ("Patent '951"), as originally issued by the USPTO, teaches a computer search system for retrieving information using textual and graphical entry paths. The patent also teaches a computerized system for selecting and ordering a variety of information, goods and services. The scope of the invention is defined by its claims.

21. Plaintiff's Patent No. 6,289,319 ("Patent '319") teaches an automatic data processing system for processing business and financial transactions between entities from remote sites. The scope of the invention is defined by its claims.

22. Plaintiff applied for Patent '951 and Patent '319 in 1994, as continuations-in-part of patent application Serial No. 613,525, filed May 24, 1984; the '951 Patent issued in 1996 and the '319 Patent issued in 2001.

23. In 1999, Mr. Lockwood employed Pricewaterhouse Coopers ("PWC") to conduct a patent licensing analysis of the computer industry to determine the most effective licensing program for the patent portfolio and a valuation thereof. Concurrent with this study, Mr. Lockwood employed the law firm of Luce, Forward, Hamilton and Scripps' ("LFHS") intellectual property licensing group to formulate an enforcement strategy. When these studies concluded in 2001, Mr. Lockwood was ready to implement PWC and LFHS's professional licensing strategies.

24. In 2002, Mr. Lockwood formed PanIP, and the Lockwood patent portfolio was exclusively licensed to PanIP. Mr. Lockwood was the managing member of PanIP. PanIP was registered with the California Secretary of State and had several employees in California. PanIP conducted business with law firms, accounting firms and other businesses that it employed. PanIP had an Internet website and registered its trademark, "PanIP," with the USPTO.

25. Prior to May 5, 2003, PanIP was successful in reaching over twenty-five agreements to license its patented technology, with companies that conducted electronic commerce and were based in fifteen different states.

The Enforcement Program

26. The Patents were infringed by many computerized Business To Business ("B2B") and Business To Consumer ("B2C") systems in the fields of multimedia computer networking, database search and electronic commerce technologies.

///

27. In the Spring of 2002, after the assistance of accounting and legal professionals, and at a substantial expense, Plaintiffs implemented a patent enforcement program through PanIP, whereby companies infringing one, or the other, or both of the Patents were offered a license for a reasonable fee while other infringing companies were named in a complaint and litigation commenced (the "Enforcement Program"). The Enforcement Program was initially successful and by mid-May 2003, PanIP had entered into licensing relationships with over twenty-five companies, headquartered in fifteen different states, and was in negotiations with several other companies.

28. In March 2002, pursuant to its Enforcement Program, Plaintiff PanIP filed a complaint in federal court for patent infringement. Defendant Hangartner represented four defendants in the action. The four defendants in the action eventually obtained licenses from PanIP in October 2002.

29. In September 2002, pursuant to the Enforcement Program, Plaintiff PanIP filed additional patent infringement complaints. Defendants Sheppard Mullin and Hangartner represented sixteen of the defendant companies.

Establishment of the PGDF Enterprise

30. In April of 2002, Defendant Hangartner was an attorney at the law firm of Liu & Liu in San Diego, California. In March of 2002, Plaintiff PanIP filed patent infringement complaints against ten e-commerce companies. Hangartner represented four of the defendants: Snow Country Ski Shop, Inc., Peekay Corporation, Dickson Supply Co., and Backcountry Experience, Inc. Defendant Hangartner organized the defendants into an enterprise with a website entitled "Panip Defendants", at URL *www.PanipCase.Homeip.net*, and were responsible false and misleading articles in newspapers and magazines about the scope and validity of the Patents. Defendant Hangartner's four clients licensed the PanIP patent portfolio on October 28, 2002. The website was in operation between May 25, 2002 and

///

September 23, 2002. Defendant Hangartner's picture and his contact information at Liu & Liu were prominently featured under the "Defendants" link.

31. PanIP filed patent infringement complaints against several e-commerce companies on September 11, 2002. Hangartner contacted several of these defendants and organized them into the PGDF enterprise following the same pattern of the earlier "Panip Defendants" website, by creating a replica website with the URL *www.YouMayBeNext.com*.

32. In October 2002, Hangartner left the Liu & Liu law firm and joined Defendant Sheppard Mullin with an agreement or understanding that Defendant Sheppard Mullin would commission and support the scheme to defraud the USPTO through PGDF's instigation of malicious and fraudulent reexamination proceedings. Between November 29, 2002 and December 5, 2006, Defendant Hangartner's picture and contact information at Sheppard Mullin was prominently featured on the PGDF website. Defendant Hangartner was promoted to partner at Sheppard Mullin by February 8, 2005.

33. Defendant Hangartner and Sheppard Mullin commissioned PGDF to do whatever it took to overcome Plaintiffs' valid patent rights and solicit more fee-paying clients for themselves. These efforts successfully attracted American Science and Surplus, Arcade Electronics, Inc., Aseptico, Inc., Burrage Music Co., Inc., Cherry Republic, Inc., CR Magnetics, Inc., DeBrand Fine Chocolates, Delasco Dermatologic Lab & Supply, Denver Fabrics, Eagles Wings, Inc., Katco Industries, Kreg Tool Co., Little Pie Company, Rock Valley Tractor Parts, Soldan's Feeds and Pet Supplies, and Three Dog Bakery. Part of the PGDF strategy employed an Internet website entitled *YouMayBeNext.com*. The PGDF website and their statements in the press explicitly stated that the PGDF purpose was to put Plaintiffs out of business and to stop the licensing program. Defendant Hangartner was prominently featured on the website with a color picture and his contact information at the law firm of Sheppard Mullin.

34. Defendants used the PGDF enterprise and website to support their scheme to defraud and to harm Plaintiffs' property interests in the Patents by deceiving and defrauding the USPTO through the instigation of sham reexamination proceedings. The scheme was funded through money solicited on the *YouMayBeNext.com* website. The Defendants exhorted visitors to their PGDF website to "make payments to them with PayPal – It's fast, free and secure!" and stated that "checks may be sent to PanIP Group Defense Fund, Inc, 101 Auburn Park Drive, Fort Wayne, IN 46825 – Please make check payable to: PanIP Group Defense Fund, Inc."

35. With knowledge that the statements were false, the website as well as press articles instigated by Defendants and PGDF stated that Plaintiff was "running a scam," "going to sting hundreds of other businesses," committing "blackmail," and committing "extortion." Defendants made specific published statements that their goal was to "Stop PanIP," and "We want to put this guy [Lockwood and PanIP] out of business," and later published that they "...have successfully stopped PanIP's strategy." Defendant Hangartner and the PGDF made the following false statements about Plaintiffs' Patents and the validity enforcement of the Patents, among others, on their PGDF website and in the press in order to generate more business for themselves and to further their fraudulent scheme:

a. *San Diego Business Journal* – "Smaller Firms Become Targets in Patent Litigation" – December 2, 2002 – "Any Web site with text, graphics and the ability to collect financial information from consumers qualifies as an infringer, Hangartner said."

b. *The Green Sheet Online* – "Nightmare on E-commerce Street" – June 2, 2002 – "We believe this is a frivolous case... There are no merits to this case. We believe the patent does not cover any form of e-commerce... I believe all companies who do business on the Internet are vulnerable to this type of frivolous litigation. Anybody

with a Web site is vulnerable to being sued by PanIP, but not what is in this particular complaint... If they prevail, they very well could go after everyone in the e-commerce chain... This guy [Lockwood] would be entitled to set up licensing agreements with every e-commerce provider in the world who offers their business in the United States," said Hangartner.

c. *YouMayBeNext.com* – "They claim that if you use graphical and textual information on a video screen for purposes of making a sale, then you are infringing on their patent. US Patent No 5,576,951. And if you accept information to conduct automatic financial transactions via a telephone line & video screen, you're infringing on their patent. US Patent No. 6,289,319."

d. *Internet Retailer.com* – "E-Retailing's Latest Hazard: Patent Lawsuits" – November 2002 – "Hangartner says the claim covers any web site that contains texts and graphics and that is capable of obtaining financial information, whether in an automated format or not."

36. The PGDF website also stated that, "We've been greatly encouraged by all who are sending in contributions. Obviously it increases our resources to have others contributing to our fight, but is also gives us a mental boost to know that people appreciate the stand we are taking. We sincerely thank you for supporting our efforts to stop PanIP from suing other e-commerce site owners."

37. The fraudulent Internet scheme was used to finance and support PGDF's enterprise which intended to defraud the USPTO regarding the valid Patents in order to harm Plaintiffs' property interests in the Patents and to economically ruin Plaintiff Lockwood and PanIP's business reputation.

///

///

Scheme to Defraud through Fraudulent Requests for Reexamination

38. Defendants agreed among themselves to use a USPTO procedure entitled "Request for Ex Parte Reexamination" to defraud the USPTO and to nullify Plaintiffs' property interests in the Patents to prevent him from being able to benefit from his patents and potentially to drive him into bankruptcy. As practitioners registered to practice before the USPTO, Defendants knew and understood that the USPTO relied on the required strict duty of candor for all practitioners before the USPTO in employing the reexamination process.

39. In furtherance of the agreement to enter into a scheme to defraud the USPTO, Defendant Hassid signed the Fraudulent Requests and Defendants mailed the Fraudulent Requests by U.S. Mail on May 5, 2003 in violation of 18 U.S.C. § 1341.

40. Defendant Hangartner stated in the press that he had hired Nuvocom, a leading prior art research firm that specialized in electronic commerce industry history, to locate examples of early electronic sales systems in order to demonstrate that the Lockwood Patents had been improvidently granted by the USPTO. Nuvocom, however, was unable to find any prior art patents to invalidate the Patents. Nevertheless, without disclosing to the Patent Office the inability of Nuvocom or themselves to locate any prior art which would have formed a legitimate basis for a patent reexamination, the Defendants, knowing there was no probable cause to file a reexamination request proceeded anyway. Part of the integrity of the USPTO process is the requirement that attorneys practicing before the Office only make statements based on a very stringent duty of candor. This strict duty of candor is set forth in 37 C.F.R. § 1.555 and 37 C.F.R. §10.23, among other places. In short, when an attorney makes a statement or files a paper with the USPTO, the Office relies on the fact that such statement must be true and can be relied on as true. *See Lipman v.*

///

///

Dickinson, 174 F.3d 1363, 1371 (Fed. Cir. 1999), citing *Kingsland v. Dorsey*, 338 U.S. 318, 319 (1949).

41. Fully aware of this requirement under patent bar standards, Defendants maliciously filed the Fraudulent Requests knowing there was no basis for such reexaminations. Defendants knew they had no probable cause to challenge the validity of the Patents, based on their own experts' failure to locate any relevant prior art. Defendants filed so-called supporting material with the USPTO that consisted of newspaper or magazine articles which did not invalidate the Patents under any objective standard. Defendants submitted this material in order to bulk up their filing, to make it appear as something it was not, and submitted it along with false and misleading statements and with complex claim charts for the sole purpose of deceiving the USPTO and harming Plaintiffs. Defendants knew the presumption is that it is the duty of a patent attorney to submit only legitimate and relevant material, and to avoid obfuscation and misdirection. One reason this duty is so crucial is that the reexamination process can be very time-consuming for both the USPTO and the inventor (here, four years) and during that time valid property rights can be rendered worthless. Without a strict duty of candor, not only would the USPTO be crippled but also inventors would be vulnerable to reexamination proceedings brought for the purpose of harassment, and to deny them their rights.

42. Nevertheless, on May 5, 2003, Defendants mailed by U.S. Postal Service to the USPTO two reexamination requests signed by Defendant Hassid as an attorney at Sheppard Mullin, and on behalf of PGDF, which were based on fraudulent and misleading representations about claimed prior art references pursuant to 35 U.S.C. §§301-303; 37 C.F.R. §1.501. Defendants mailed their Fraudulent Requests by two different United States Postal Service Express Mail orders, numbers 727,855,784 and 727,855,798.

///

///

43. Defendants knew that under the USPTO rules, Plaintiffs could not challenge Defendants' Fraudulent Requests or take any official action with the USPTO until after the USPTO made its determination whether to grant or deny the Fraudulent Requests. Defendants knew also that once a reexamination request was granted by the USPTO, it would take years to complete the process, and that during this time, the Patents would be under a cloud of unenforceability with virtually no way for Plaintiffs to license or otherwise lawfully benefit; and that the value of such patents is severely limited due to the pendency of reexamination proceedings. Defendants knew that the USPTO presumes that requests to institute reexamination proceedings of the Patents, even if in fact based on deceptive means, are done honestly and in good faith, and that such a reexamination would have the practical effect of placing the Enforcement Program on hold for three to four years or even longer, and might have caused it to end altogether, thereby damaging the Patents and Plaintiffs.

44. In the Fraudulent Requests before the USPTO, Defendants Hassid and Hangartner, attorneys working for Sheppard Mullin, acting through PGDF (the named requestor) in utter disregard and violation of their strict duty of candor and duty to investigate factual and legal allegations submitted before the USPTO pursuant to federal law and professional codes of ethics, made false and misleading statements characterizing references as alleged "prior art" that Defendants asserted raised a substantial new question as to patentability of the Patents. Defendants knew that in fact their own experts had informed them that there was no legitimate prior art.

45. Defendants knew the USPTO would rely on the duty of candor requiring them to provide only truthful statements or conclusions about prior art references submitted in reexamination requests. Defendants knew the USPTO routinely grants reexamination for approximately 95% of the requests submitted if such requests appear to meet the form and substance of multiple prior art references, detailed claim

charts, extensive analysis of the claims and of how the prior art reads on such claims. In order to induce the USPTO to decide that "a substantial new question of patentability" was present, and knowing the level of acceptability the USPTO required, Defendants mailed the Fraudulent Requests consisting of about three hundred and fifty (350) pages designed to give the impression, though false, of the existence of prior art.

46. Defendants knew that the USPTO has a PTOL-2077 form that lists eight items of which a request must meet. For example, the fourth item requires, "A statement pointing out each substantial new question of patentability based on the cited patents & printed publications, and a detailed explanation of the pertinence and manner of applying the patents and printed publications to every claim for which reexamination is requested." Defendants knew and agreed among themselves to defraud the USPTO by falsifying the required statements necessary for the granting of the Fraudulent Requests, without which their Fraudulent Requests would have been rejected.

47. Defendants knew that in order to succeed in their scheme to injure Plaintiffs' property rights and to deceive the USPTO into granting the Fraudulent Requests, they had to avoid a rejection of "A Notice of Failure to Comply", PTOL-2077, which requires: "The requester should quote each pertinent teaching in the prior art reference, referencing each quote by page, column and line number, and any relevant figure numbers." Defendants knew that the purported prior art references they had located did not qualify nor meet these requirements, so they fabricated numerous statements about pages, columns, and line numbers with complex claim charts allegedly indentifying prior art references. Defendants thereby deceptively gave the appearance of invalidating each claim of the Patents, in order to deceive the USPTO into granting reexamination, for the purpose of depriving Plaintiffs of property rights to use the Patents, to which Plaintiffs were entitled for seventeen years. See 35 U.S.C. § 154(c).

48. For example, in support of their Fraudulent Requests to the USPTO, Defendants falsely represented that a CompuServe document entitled Electronic Mall described prior art. However, the Electronic Mall manual printed in 1986, could not have qualified it as prior art as to the '319 Patent given the patent's application date. To circumvent that problem, Defendants made false and misleading statements in the request for the '319 Patent that the Electronic Mall system described in the 1986 manual was "available...starting in the early 1980s," and that the 1986 manual was a "particular version" implying there was an earlier version published in the "early 1980s", which if true might have arguably qualified as prior art under the laws governing patent reexaminations. In fact, these statements were not true, and Defendants knew they were false and that they did not have a factual basis to make such representations of material fact.

49. In addition, Defendants made false statements of material fact with respect to what was supposedly shown in prior art references relied upon by Defendants in the Fraudulent Requests, claiming that other cited prior art references disclosed elements that were not actually present in the prior art references. All of these misrepresentations of fact were made by Defendants with the specific purpose and intent that the USPTO would rely on them to initiate the reexamination of the Patents. Defendants knew that, but for their making such false and misleading statements, the USPTO was not likely to find a substantial new question of patentability presented and would not grant the requests for reexamination.

Specific Examples of Misrepresentations of "Prior Art" Advanced by Defendants in the Request for Reexamination of the '319 Patent include the following:

50. Electronic Mall Reference. Material information bearing on the publication date and public accessibility of the reference was withheld from the USPTO in the request. The only date given in the request for this document was the year 1986. Because any document must have a publication or effective date at least

prior to 24 January 1985 in order to qualify as prior art to the '319 patent under 35 U.S.C. §102 (b), the submitted document is not "prior art" under 35 U.S.C. § 102(b). Nor is the Electronic Mall a "printed publication" as required by 35 U.S.C. §102 (b). The material fact that the Electronic Mall reference is referred to, within its own pages, as a "confidential and proprietary manual" was not brought to the attention of the Examiner in the request. Instead, Defendants misrepresented that the "*system*" i.e., not the alleged prior art reference itself, was "available to the public." The request used Electronic Mall in a manner designed to obfuscate and deceive the USPTO, asserting that the claims of the '319 patent were anticipated and/or obvious in view of the reference, which was not prior art.

51. IVIS Reference. The request represented that "these new prior art references provide teachings not provided during prosecution of the Lockwood '319 Patent." This statement was false. In fact, the IVIS reference had been of record in the file of Lockwood's "grandparent" patent application Serial No. 613,525 ("S/N '525"), now Patent No. 4,567,359 ("'359 Patent") from which the '319 Patent issued as a continuation-in-part. In an amendment during the application prosecution of the '319 Patent of September 19, 1995, the '359 Patent which included IVIS as part of the preferred embodiment, was provided by Plaintiff Lockwood's attorney who mailed to the USPTO examiner copies of both the '359 Patent and S/N '525. Plaintiff Lockwood himself had provided the IVIS reference to the USPTO during the prosecution of the '359 "grandparent" Patent and IVIS was repeatedly incorporated in the preferred embodiment of that patent. This information was a matter of public record and known to Defendants, who misrepresented the reference as "new," as evidenced by the USPTO date-stamp on several pages of the IVIS reference, which matches the date it was received from Lockwood by the USPTO during prosecution, as well as by "bates stamp" numbers on each page of the document from the *Lockwood v. American Airlines, Inc.*, litigation in which the "grandparent" patent was involved.

52. Comp-U-Store Reference. This reference was cited in the request essentially in its entirety and with lack of specificity, as disclosing each and every limitation of claims of the '319 Patent, which in fact it did not disclose. In the prosecution of this request, the Examiner had to rely on the Defendants' duty of candor in practicing before the USPTO, and accepted what the request asserted as true, but which was not true. Rather, claim 1 of the '319 Patent indicates to any practitioner before the USPTO how those limitations in claim 1 did not appear in Comp-U-Store, and that Defendants statements in the Fraudulent Requests were false. A person of ordinary skill in this technical field, after reading the '319 patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in Comp-U-Store (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Comp-U-Store was a misrepresentation to the USPTO.

53. Globecom. Another purported reference, Globecom, was cited by Defendants, in its entirety and with lack of specificity, as showing each and every limitation of claim 1 of the '319 Patent. However, this reference did not teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '319 Patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in Globecom (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Globecom is a misrepresentation to the USPTO.

54. Discount Store News ("DSN"). A purported reference entitled Discount Store News was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '319 Patent. However, this reference did not

teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '319 Patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in DSN (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by DSN was a misrepresentation to the USPTO.

55. Cumulative to Prior Art of Record. In furtherance of their effort to deceive the USPTO into determining that a substantial new question of patentability was presented by the request, Defendants stated that "all of these prior art references are closer to the claimed subject matter of the Lockwood '319 Patent than are the prior art references that were of record in the file of the Lockwood '319 Patent," and that "these new prior art references provide teachings not provided during prosecution of the Lockwood '319 Patent." Defendants knew or should have known these statements were false. In fact, none of the references submitted with Defendants' request rose to the level of the closest prior art of record, for example Lockwood's U.S. Patent No. 4,359,631 ("'631 Patent"), over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, and which, together with its reissue U.S. Patent No. Re. 32,115, has been cited by 209 subsequently issued U.S. patents. Defendants knew or should have known that the references they submitted were merely cumulative to the closest prior art of record, for example, Plaintiff Lockwood's U.S. Patent No. 4,359,631 (" '631 Patent"), and did not raise a substantial new question as to the patentability of the '319 Patent, but they falsely asserted that "all" of their references were superior to the prior art of record and "provid[ed] teachings not provided" in the '319 Patent. A person of ordinary skill in this technical field, after reading the '631 Patent and other prior art of record, would readily realize that the references submitted by Defendants did not even rise to the level of the closest prior art of record in the file of the '319 Patent.

Therefore, Defendants' statements that the references they submitted are closer to the claimed subject matter of the '319 Patent than the prior art of record and provide teachings not provided by the '319 Patent are misrepresentations to the USPTO and were made for the purpose of deceiving the USPTO in order to harm Plaintiffs.

Specific Examples of Misrepresentations of "Prior Art" Advanced by Defendants in the Request for Reexamination of the '951Patent include the following:

56. Comp-U-Store. This reference was cited in the request, essentially in its entirety and with lack of specificity, as disclosing each and every limitation of claims 1-4 and 6-10 of the '951 Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Comp-U-Store (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Comp-U-Store was a misrepresentation to the USPTO.

57. Discount Store News ("DSN"). DSN was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in DSN (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by DSN was a misrepresentation to the USPTO.

58. Forbes. Another purported reference entitled Forbes was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. However, this reference did not teach or suggest any limitations of claim 1. A person of ordinary skill in this technical field, after reading the '951

Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Forbes (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by Forbes was a misrepresentation to the USPTO.

59. Kleinberg. A reference entitled Kleinberg was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. However, this reference did not teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Kleinberg (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by Kleinberg was a misrepresentation to the USPTO.

60. Globecom. This reference was cited in its entirety and with lack of specificity, as showing each and every limitation of claim 1 of the '951 Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Globecom (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Globecom was a misrepresentation to the USPTO.

61. Cumulative to Prior Art of Record. In furtherance of their effort to deceive the USPTO into determining that a substantial new question of patentability was presented by the request, Defendants stated that "all of these prior art references are closer to the claimed subject matter of the Lockwood '951 Patent than are the prior art references that were of record in the file of the Lockwood '951 Patent," and that "these new prior art references provide teachings not provided during

prosecution of the Lockwood '951 Patent." Defendants knew or should have known that these statements were false. In fact, none of the references submitted with Defendants' request rose to the level of the closest prior art of record, for example Plaintiff Lockwood's '631 Patent, over which the '951 Patent was found to be patentable by the USPTO examiner, and which, together with its reissue U.S. Patent No. Re. 32,115, has been cited by 209 subsequently issued U.S. patents. Defendants knew or should have known that the references they submitted were merely cumulative to the closest prior art of record, e.g., the '631 Patent, and did not raise a substantial new question as to the patentability of the '951 Patent, but they falsely asserted that "all" of their references were superior to the prior art of record and "provid[ed] teachings not provided" in the '951 Patent. A person of ordinary skill in this technical field, after reading the '631 Patent and other prior art of record, would readily realize that the references submitted by Defendants did not even rise to the level of the closest prior art of record in the file of the '951 Patent. Therefore, Defendants' statements that the references they submitted are closer to the claimed subject matter of the '951 Patent than the prior art of record and that they provide teachings not provided by the '951 Patent were misrepresentations to the USPTO and were made for the purpose of deceiving the USPTO and harming Plaintiffs.

62. Because of the easily identifiable application dates for the Patents as well as the nature of the Patents and of the references claimed as "prior art" in the Fraudulent Requests, no reasonable attorney in the same circumstances would have believed that the prior art references submitted in the Fraudulent Requests by Defendants would raise a substantial new question as to patentability or that probable cause existed to bring the Fraudulent Requests for reexamination.

63. Knowing that probable cause was lacking to bring such Fraudulent Requests before the USPTO and knowing that the above assertions were false and misleading, Defendants knowingly and maliciously made misleading characterizations of the claimed prior art and its applicability to the Patents in order

to deceive the USPTO, by presenting these statements in approximately 350 pages of documentation, replete with charts and repetitive explanations which Defendants were aware the USPTO Examiners would have to review and which were designed to obfuscate the material misrepresentations.

64. Knowing that the USPTO would rely on the Defendants' strict duty of Candor, Defendants also knew that the USPTO would rely on whatever factual statements and assertions made by them in the Fraudulent Requests. Defendants knew as practitioners in the area of patent law, that approximately 95% of requests for reexamination are granted and that the practical effect of the reexamination proceeding is to cast a cloud on the use, enforcement, selling or otherwise receiving compensation from the patent by the patent-holder. Defendants also knew that the practical effect of granting The Fraudulent Requests would be that such cloud would linger over the Patents for the duration of the reexamination, which extend to four years or longer. Defendants had no reasonable good faith belief that there was in fact any substantial new question of patentability or that the reexamination proceedings would ultimately resolve in Defendants' favor. Defendants submitted their two Fraudulent Requests for reexamination through the U.S. Mail for the purpose of causing Plaintiffs economic harm by delaying and disrupting Plaintiffs' Enforcement Program and potentially driving them out of business, regardless of the veracity of the statements made to the USPTO to begin proceedings or their ultimate resolution.

Continuation of Fraudulent Scheme

65. In support of their scheme to defraud the USPTO and to harm Plaintiffs, Defendant Sheppard Mullin, along with and in conspiracy with Defendants Hassid and Hangartner, on May 5, 2003, after the Fraudulent Requests had been filed, filed a Motion to Stay Litigation in the Enforcement Proceedings before the District Court

/ / /

/ / /

for the Southern District of California. Defendant Hangartner signed a Declaration in Support thereof in which he stated:

a. "The PanIP Group Defense Fund, Inc., a group made up of sixteen defendants in this and three other related patent cases, has identified extensive, published prior art dating to the early 1980's that unequivocally anticipated the alleged inventions in both U.S. Patent Nos. 5,576,951 (the '951 Patent) and 6,289,319 (the '319 Patent)."

b. "These requests seek reexamination of the '951 and '319 Patents based on prior art references that clearly anticipate and/or render obvious all the elements of independent claims 1 through 10 of the '951 Patent and independent claim 1 of the '319 Patent."

c. "In addition, the requests seek reexamination of dependent claims 2-4 and 6-9 of the '951 Patent and claims 2-6 of the '319 Patent based on anticipation and/or obviousness."

d. "These requests for reexamination are all based on published prior art references that were not considered by the examiner during prosecution of the '951 and '319 Patents."

e. "None of this prior art was identified or considered during prosecution of the patents."

f. "It is likely that reexamination will result in a determination by the USPTO that the patents-in-suit are invalid."

g. "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge."

66. In support of their scheme to defraud the USPTO and to harm Plaintiffs, Defendant Sheppard Mullin, in conspiracy with Defendants Hassid and Hangartner, on May 6, 2003, after the Fraudulent Requests had been filed, in support of their

Motion to Stay Litigation, in the Enforcement Proceedings before the District Court for the Southern District of California, mailed a letter to Magistrate Judge James F. Stiven which stated:

a. "PGDF's reexamination requests are based on multiple prior art references that were not in the record during prosecution of these patents. These references predate the earliest patent applications filed by Mr. Lockwood, and clearly anticipate and/or render obvious the inventions allegedly represented in the '951 and '319 Patents."

b. "Defendants have identified prior art that they firmly believe renders Plaintiff's patents invalid and they have invoked a procedure to test that belief before the U.S. PTO. [sic]"

"Further, since the reexamination of the patents will be an ex parte proceeding they have no incentive to settle this case pending a decision on their motion to stay."

67. As a result of Defendants' deceitful statements and reliance on the Fraudulent Requests, the district court granted their Motion to Stay immediately prior to the scheduled Markman hearing which would have allowed the infringement to be adjudicated on the merits, and the Enforcement Proceedings were stayed pending the resolution of the sham reexamination of the Patents unlawfully instigated by Defendants. The stay had the intended effect of shutting down Plaintiffs' ability to use or derive any benefit from the valid Patents.

68. To continue and to support their scheme to defraud, Defendants, through the website of PGDF, *YouMayBeNext.com,* fraudulently stated that it "had identified extensive, published prior art dating to the early 1980's that unequivocally anticipated the alleged inventions in both U.S. Patent Nos. 5,576,951 (the '951 Patent) and 6,289,319 (the '319 Patent)." Defendants made these statements knowing they were false with the intent that they would be relied upon by the federal court and the public and to solicit funds in which to invest back into PGDF, which

was designed and operated by Defendants solely to harm Plaintiffs' Patents and to put Plaintiffs out of business.

69. On May 16, 2003, Defendants' intention to deprive Plaintiffs, through fraud on the USPTO, of the opportunity to enforce the valid property rights in the Patents was further evidenced by their statements in a letter sent to the Magistrate Judge James F. Stiven of the U.S. District Court for the Southern District of California: "Here, both patents have been challenged based on anticipation under 35 U.S.C. § 102(b) and obviousness under 35 U.S.C. § 103. The requests are based on numerous prior art references dating to the early 1980's, before the filing date of the earliest patents in the family of patents that includes the patents in suit. U.S. Patent No. 6,289,319 (the '319 Patent) is challenged *based on ten separate references*, none of which was in the record during examination of the '319 Patent. U.S. Patent No. 5,576,951 (the '951 Patent) is *challenged based on five separate references*, none of which was in the record during examination of the '951 Patent. These reference [sic] clearly anticipate every element of the claimed inventions in both the '319 and '951 Patents." [Italics in original]. This evidenced Defendants' knowledge of the prior art and their intent to deceive the USPTO and to deprive Lockwood of this property rights. None of the Defendants' so called prior art references were relevant to or affected the validity of the Patents and Defendants knew this at the time the statements were made.

70. In reliance on the deceptive mischaracterization of alleged pieces of prior art submitted by Defendants in their Fraudulent Requests for reexamination, the USPTO did grant the Fraudulent Requests, which had the intended effect of stopping Plaintiffs' Enforcement Program, causing great economic loss and the loss of business relationships in the form of targeted licensors and the use of their Patents for over four years of the seventeen-year life of the Patents.

///

///

71. The Defendants continued their fraudulent scheme to "put this guy [Lockwood and PanIP] out of business" through the continued use of the PGDF website by making fraudulent statements on their Internet website, *YouMayBeNext.com,* regarding the enforceability of the Patents and to obtain money from the general public to finance their scheme.

72. The granting of the Fraudulent Requests for reexamination had the intended effect of proximately causing Plaintiffs severe economic harm in having to defend the Patents before the USPTO and has rendered Plaintiffs unable to use, enforce, sell, or license the Patents for several years over the life of the Patents.

73. Despite knowing the fraudulent, misleading and malicious content of the Fraudulent Requests, from May 2003 through December 5, 2006, Defendants continued to perpetrate the fraud through the PGDF enterprise and website, continued to solicit funds from the general public, and continued to make false statements therein. Defendants boasted in *YouMayBeNext.com*: "First, through the support of the public and the help of a private prior art search firm, we have found substantial evidence undermining the Patents. In May we used this evidence to file requests with the U.S. Patent and Trademark Office ("PTO") to reexamine and invalidate both of them. At the same time we moved to stay PanIP's lawsuits, and in June the federal court in San Diego issued an order staying the cases to allow our reexamination requests to be considered. In July, we received notice that the PTO has accepted our request for reexamination and agrees that we have raised "a substantial new question of patentability" as to the claims of the first of PanIP's patents. Second, we have obtained an award of attorney's fees against PanIP for approximately $19,000.00 related to the defense of PanIP's unsupported lawsuit alleging defamation and trademark infringement against the PanIP Group Defense Fund… Third, we have successfully stopped PanIP's strategy…".

///

///

74. Further, on or about March 19, 2004, Defendants used the existence of the false and Fraudulent Requests and Plaintiffs' severely injured economic situation to coerce Plaintiffs into dismissing the Enforcement Proceedings and execute a Covenant Not to Sue and Release Agreement with PGDF and the defendants, thereby effectively shutting down the Enforcement Program.

75. Prior to May 5, 2003, PanIP developed a patent licensing program for the benefit of tax-exempt, non-profit organizations, e.g., museums and youth organizations. Plaintiffs were preparing to submit PanIP's request to the IRS for a "private letter ruling," which is a written statement issued to the taxpayer by the IRS in which interpretations of the tax law are made and applied to a specific set of facts. This licensing opportunity and the future licensing benefit to PanIp to be derived therefrom was lost due to the conduct of the Defendants' fraudulent and unlawful conduct.

76. PanIP was actively working with the Motion Picture Association of America (the "MPAA") and the Recording Industry Association of America (the "RIAA") to assist in terminating or limiting their multi-billion dollar loss from piracy of their motion pictures and music over the Internet by enforcement of the PanIP patents. Internet piracy utilized peer-to-peer technology that infringed the PanIP patent portfolio. During 2004, Mr. Lockwood with PanIP's V.P. of Legal Affairs met with MPAA executives and their attorneys at the MPAA offices in Los Angeles to develop a business strategy. However, because of the Defendants' unlawful conduct in filing the malicious Fraudulent Requests, the MPAA and RIAA postponed further discussion until the patents emerged from reexamination. This multi-million dollar licensing relationship, as well as other business relationships based on the Patents, was lost due to the conduct of Defendants' fraudulent and unlawful conduct.

///

///

Patent Office Vindicates Lockwood Patents After Four Years

77. Over four years after the reexamination proceedings instigated by Defendants began on May 5, 2003 these proceedings were resolved completely in Plaintiffs' favor. The USPTO reconfirmed the patentability of the inventions disclosed and claimed therein, without material change in the scope or breadth of their coverage, thus effectively confirming that none of the Defendants' representations in their Fraudulent Requests about the validity of the inventions disclosed and claimed in the Patents were accurate or constituted bases for probable cause to create a substantial new question of patentability.

78. On July 17, 2007, the USPTO issued Ex Parte Reexamination Certificate U.S. 6,289,310 C1, confirming all claims.

79. On January 29, 2008, the USPTO issued Ex Parte Reexamination Certificate US 5,576,951 C1, confirming all claims.

80. For a period of over four and one-half years, Defendants have demonstrated their total disregard for abiding by USPTO rules and regulations and the termination of their fraud. Defendants were mailed all correspondence between the USPTO and Plaintiffs' attorneys, which made manifest their fraud, yet Defendants ignored their duty to inform the USPTO. The responsibility of compliance with 37 CFR 1.555 rested with Defendants, and any fraud practiced or attempted on the Office or any violation of the duty of disclosure through bad faith or intentional misconduct by any such individual results in noncompliance with 37 CFR 1.555(a). This duty of disclosure is consistent with the duty placed on patent applicants by 37 CFR 1.56. All such individuals who fail to comply with 37 CFR 1.555(a) do so at the risk of diminishing the quality and reliability of the reexamination certificate issuing from the proceeding.

81. Defendants met with an attorney for Plaintiffs on December 17, 2006 and were informed in detail regarding the extent of their fraud. Defendants again ignored their responsibilities in connection with having submitted the two Fraudulent

Requests for reexamination, and they failed to abide by the rules and regulations of the USPTO and their duty of candor. *See Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 818 (1945)("Those...who are parties to Patent Office proceedings have an uncompromising duty to report to it all facts concerning possible fraud or inequitableness...Public interest demands that all facts relevant to such matters be submitted formally or informally to the Patent Office").

82. The Patents are under a continuing threat of a similar fraud being perpetrated, given that the U.S. patent laws and the USPTO rules and regulations allow multiple requests for reexaminations even based on the same prior art references, and given that Defendants through PGDF have repeatedly made statements that their goal is to put Plaintiffs out of business. Under the rules and regulations of the USPTO, Defendants, at any time, may instigate deceptive reexamination proceedings in order to prevent Plaintiff s from ever enforcing their Patents. Requesters can submit multiple requests while a patent is in reexamination, delaying endlessly the final decision to issue a certificate or to amend claims.

83. Due to Defendants' misconduct and due to their deceptive and malicious instigation of USPTO proceedings, from the time of the submission of the Fraudulent Requests, Defendants' violations and fraudulent concealment were continuing, as was the injury to Plaintiffs. Plaintiffs did not know and had no reason to know the full extent of the wrongful nature of Defendants' conduct before expending extensive time and effort defending the Patents in the reexamination proceedings. Plaintiffs, like the USPTO, initially relied on the Defendants' duty of candor, and due to the deceitful and misleading nature of the Fraudulent Requests, Plaintiffs were prevented from discovering or realizing the full extent of Defendant's fraudulent use of the reexamination proceedings for improper purposes until approximately three years after the Fraudulent Requests were filed.

///

84. After Plaintiffs and their attorneys met with Defendant Sheppard, Mullin, on January 5, 2007, Plaintiffs and Defendant Sheppard Mullin, signed a Tolling Agreement that provided the period from the date of signing to April 5, 2007 (i.e. 90 days) shall not be included in determining the applicability of any statute of limitations, laches, or any other defense based on the lapse of time in any action or proceeding brought by either party against the other arising from Defendant Sheppard Mullin's representation of its clients pursuant to the Enforcement Program. A sixty-day extension was signed, terminating on June 5, 2007.

Procedural History of this Action

85. On June 4, 2007, Plaintiff filed an in pro per complaint in the Los Angeles Superior Court against Defendants Sheppard Mullin and Hangartner based upon the same facts alleged herein that the Defendants made false representations in the Fraudulent Requests for reexamination. Defendants filed a demurrer and a special motion to strike the complaint under California's Anti-SLAPP statute, Cal. Code. Civ. Proc. § 425.16. On September 10, 2007, Plaintiff retained counsel and filed an amended complaint alleging causes of action for malicious prosecution, intentional interference with prospective economic relations, and fraudulent misrepresentations, all of which were based upon the same facts alleged in the original complaint. The Defendants filed a second motion to strike the amended complaint on November 20, 2007. The Superior Court granted Defendants' motion to strike the complaint (specifically not referencing the amended complaint) and entered judgment against Plaintiff on January18, 2008. *See Lockwood v. Sheppard, Mullin, Richter & Hampton*, 173 Cal. App. 4th 675, 680 (2009).

86. Plaintiff Lockwood filed timely notices of appeal on December 14, 2007 and February 7, 2008 from the orders granting each motion to strike the original and amended complaints and the California Court of Appeal, Second District consolidated his appeal. On April 30, 2009, the Court of Appeal vacated the judgments of the trial court on the basis that Plaintiff's claims arose under the U.S.

patent laws and were therefore subject to the exclusive jurisdiction of the federal courts pursuant to 28 U.S.C. § 1338(a). *See Lockwood v. Sheppard, Mullin, Richter & Hampton*, 173 Cal. App. 4th 675 (2009). The California Court of Appeal held that although the causes of action were based in state law (and plaintiff would have to prove for example: (1) that the prior art references Defendants cited in their request for reexamination did not qualify as prior art and /or did not disclose what Defendants asserted; (2) that Defendants knew or should have known that their representations were incorrect or misleading; and (3) that without Defendants misrepresentations, the USPTO would not have initiated a reexamination), in order to make the necessary legal determinations at issue, findings regarding substantial questions of federal patent law including the workings of the U.S. Patent office would be integral to the claims. *Id.* at 686-687. Therefore, Plaintiffs' state causes of action must exclusively be brought in federal court. *See id.*

FIRST CAUSE OF ACTION

Malicious Prosecution

(Against All Defendants)

87. Paragraphs 1 through 86 are incorporated herein.

88. Defendants wrongfully used the reexamination proceedings before the USPTO in submitting fraudulent, misleading Fraudulent Requests for reexamination of Plaintiffs' Patents in violation of federal law by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and engaging in conduct that is prejudicial to the administration of justice. See, e.g., 37 C.F.R.§ 1.555; §10.23 (b); Cal. Bus. Prof. Code § 6068 (d), (g).

89. Among other things, the prior art references Defendants cited in their Fraudulent Requests of the Patents did not qualify as prior art under the governing patent law and/or did not disclose or state what Defendants represented to the USPTO. Defendants knew or should have known that their representations regarding, for example, prior art, were incorrect or misleading and without

Defendants' misrepresentations the USPTO would not have initiated a reexamination of Plaintiffs' Patents. At the end of a four year process, the USPTO necessarily determined that Defendants' representations regarding among other things, the prior art, were without probable cause and false in that these references submitted by Defendants did not disclose, teach or suggest the patented Lockwood inventions.

90. The reexamination proceedings resolved in Plaintiffs' favor when all claims of the Patents were confirmed in entirety on July 17, 2007 and on January 29, 2008.

91. Defendants submitted the Fraudulent Requests without probable cause in that no reasonable attorney would have found the Fraudulent Requests legally tenable under the patent laws after prudent investigation of the alleged pieces of prior art and the law governing patent reexamination.

92. Defendants acted primarily for a purpose other than succeeding on the merits of the claim, i.e., for the purpose of defrauding the USPTO into sham reexaminations based on The Fraudulent Requests in order to injure Plaintiffs by derailing the successful enforcement of the Patents and for the purpose of causing economic harm to Plaintiffs, as expressed by Defendants in their public statements.

93. But for Defendants' deceptive Fraudulent Requests before the USPTO that violated their duty of candor and duty to investigate, reexamination would not have been granted, thereby placing a cloud upon Plaintiffs' right to the use of or enforcement of the Patents, requiring Plaintiffs to expend exorbitant amounts of money and time to defend the Patents during the reexamination process that lasted over four years.

94. Defendants' conduct proximately caused serious financial harm to Plaintiffs including, but not limited to, the loss of the use of their Patents, including through their licensing and Enforcement Program, the loss of business reputation, and collateral economic harm associated with the loss of the use of property rights, as

///

well as expenses, attorneys fees and costs incurred. Defendants' conduct was willful, malicious, fraudulent and oppressive, justifying an award of punitive damages.

SECOND CAUSE OF ACTION

Intentional Interference with Prospective Economic Relations

(Against All Defendants)

95. Paragraphs 1 through 94 are incorporated herein.

96. Defendants' conduct was wrongful, and constituted willful and negligent interference with plaintiff's economic and prospective economic advantages in that Defendants knew that Plaintiffs' Enforcement Program was resulting in licenses from business/licensors that were using Plaintiffs' patented technologies.

97. When Defendants filed the Fraudulent Requests, they were aware of the economic advantage and prospective economic advantage that Plaintiffs had and reasonably expected to obtain.

98. Defendants were also aware that if the Fraudulent Requests were successful in causing the USPTO to initiate reexamination proceedings, the Enforcement Program would be stopped during the several year pendency of the proceedings, and that Plaintiffs would need to expend resources to defend the reexamination, which resources would thus be diverted from and not available for reinstitution of the Enforcement Program, should the Patents emerge intact.

99. Defendants intended to disrupt these licensing relationships by maliciously and in bad faith instigating sham reexamination proceedings before the USPTO for the purpose of derailing Plaintiffs' licensing efforts and Enforcement Program through the use of deception and wrongful conduct in violation of federal and state law and rules of professional ethics.

100. Defendants have proximately caused financial and economic harm to Plaintiffs, including but not limited to loss of the use of their valid Patents through licensing relationships, out of pocket expenses related to the Enforcement Program,

attorneys' fees, and lost profits from the Enforcement Program which would have continued but for Defendants' wrongful conduct.

101. Defendants' conduct was willful, malicious, fraudulent and oppressive, justifying an award of punitive damages.

THIRD CAUSE OF ACTION

Fraudulent Misrepresentation

(Against All Defendants)

102. Paragraphs 1 to101 are incorporated herein.

103. The Defendants knowingly made false and misleading representations without regard to their veracity to the USPTO regarding the applicability of so called prior art and the enforceability of Plaintiffs' Patents to create the impression that there were questions of the Patents' validity that Defendants knew did not exist.

104. Specifically, the prior art references cited in the Fraudulent Requests did not qualify as prior art under the patent laws and/or did not disclose what Defendants said they disclosed.

105. Defendants presented to the USPTO Fraudulent Requests for reexamination in a deceptive manner based on half-truths regarding application of purported prior art to Plaintiffs' Patents which were calculated to deceive and used to create an impression that was substantially and materially false.

106. Defendants knew or should have known that their representations regarding the purported prior art references were incorrect or misleading.

107. Defendants made such misleading representations in the Fraudulent Requests for reexamination with the intent that the USPTO and Plaintiffs and their attorneys would rely on the veracity of the representations, e.g., by submitting large amounts of irrelevant material including detailed charts with the Fraudulent Requests to give an appearance that did not accord with reality.

/ / /

/ / /

108. But for Defendants' misrepresentations, the USPTO would not have granted the Fraudulent Requests for reexamination.

109. The USPTO did reasonably rely on the Defendants' proper comportment with professional ethics and statutory duty of candor in requesting reexamination, and as a result the Fraudulent Requests were granted with consequent harm to Plaintiffs, including but not limited to loss of the use of the valid Patents through licensing relationships, out of pocket expenses related to the Enforcement Program, attorneys' fees, and lost profits from licensing of the Patents, royalties and profits from the Enforcement Program which would have continued but for Defendants' wrongful conduct.

110. But for the fraudulent misrepresentations made by Defendants, the Plaintiffs would not have suffered such harm.

FOURTH CAUSE OF ACTION

Violation of Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §1962(c)

(Against Sheppard Mullin Only)

111. Paragraphs 1 to 110 are incorporated herein.

112. Defendant Sheppard Mullin commissioned, associated with, conducted and operated the activities of the enterprise of PGDF and its website, *YouMayBeNext.com*, which was created for the sole purpose of engaging in a pattern of racketeering intended to defraud the USPTO and to cause harm to Plaintiffs' business relationships and property interests in the Patents.

113. For example, in support of its Fraudulent Requests to the USPTO, Defendants falsely represented that a CompuServe document entitled Electronic Mall described prior art. However, the Electronic Mall manual printed in 1986, could not have qualified it as prior art as to the '319 Patent given its application date. However, to circumvent that problem, Defendants made false and misleading statements in the Request for the '319 Patent that the Electronic Mall system described in the 1986 manual was "available…starting in the early 1980s," and that

the 1986 manual was a "particular version" implying there was an earlier version published in the "early 1980s", which if true might have qualified as prior art under the laws governing patent reexaminations. In fact, these statements were not true, and Defendants knew they were false and that they did not have a factual basis to make such representations of material fact.

114. Defendants made false statements of material fact with respect to what was supposedly shown in the purported prior art references relied upon by Defendants in the Requests, claiming that other cited prior art references disclosed elements that were not actually present in the so-called prior art references. All of these misrepresentations of fact were made by Defendants with the specific purpose and intent that the USPTO would rely on them to initiate the reexamination of the Patents. Defendants knew that, but for their making such false and misleading statements, the USPTO likely would not find a substantial new question of patentability presented and would not grant the requests for reexamination.

115. On May 5, 2003, in furtherance of the scheme to defraud the USPTO, and in violation of 18 U.S.C. § 1341, Defendant Sheppard Mullin mailed to the USPTO a fraudulent request for reexamination of the '951 Patent, in the name of the PGDF enterprise and signed by Defendant Hassid. The request contained numerous deceptive and fraudulent misrepresentations, including but not limited to:

116. Comp-U-Store. This reference was cited in the request, essentially in its entirety and with lack of specificity, as disclosing each and every limitation of claims 1-4 and 6-10 of the '951 Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Comp-U-Store (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Comp-U-Store is a misrepresentation to the USPTO.

117. Discount Store News ("DSN"). DSN was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in DSN (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by DSN is a misrepresentation to the USPTO.

118. Forbes. Another purported reference entitled Forbes, was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. However, this reference did not teach or suggest any limitations of claim 1. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Forbes (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by Forbes is a misrepresentation to the USPTO.

119. Kleinberg. A reference entitled Kleinberg was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '951 Patent. However, this reference did not teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Kleinberg (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of at least claim 1 are met by Kleinberg was a misrepresentation to the USPTO.

120. Globecom. This reference was cited in its entirety and with lack of specificity, as showing each and every limitation of claim 1 of the '951

Patent. A person of ordinary skill in this technical field, after reading the '951 Patent and the closest prior art, over which the '951 Patent was found to be patentable by the USPTO, would readily realize there was nothing in Globecom (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Globecom is a misrepresentation to the USPTO.

121. Cumulative to Prior Art of Record. In furtherance of their effort to deceive the USPTO into determining that a substantial new question of patentability was presented by the request, Defendants stated that "all of these prior art references are closer to the claimed subject matter of the Lockwood '951 Patent than are the prior art references that were of record in the file of the Lockwood '951 Patent," and that "these new prior art references provide teachings not provided during prosecution of the Lockwood '951 Patent." Defendants knew or should have known that these statements were false. In fact, none of the references submitted with Defendants' request rose to the level of the closest prior art of record, for example Plaintiff Lockwood's '631Patent, over which the '951 Patent was found to be patentable by the USPTO examiner, and which, together with its reissue U.S. Patent No. Re. 32,115, has been cited by 209 subsequently issued U.S. patents. Defendants knew or should have known that the references they submitted were merely cumulative to the closest prior art of record, e.g., the '631 Patent, and did not raise a substantial new question as to the patentability of the '951 Patent, but they falsely asserted that "all" of their references were superior to the prior art of record and "provid[ed] teachings not provided" in the '951 Patent. A person of ordinary skill in this technical field, after reading the '631 Patent and other prior art of record, would readily realize that the references submitted by Defendants did not even rise to the level of the closest prior art of record in the file of the '951 Patent. Therefore, Defendants' statements that the references they submitted are closer to the claimed subject matter of the '951 Patent than the prior art of record and provide teachings

not provided by the '951 Patent are misrepresentations to the USPTO and made for the purpose of deceiving the USPTO and harming Plaintiffs.

122. Because of the easily identifiable application dates for the Patents as well as the nature of the Patents and of the references claimed as "prior art" in the Fraudulent Requests, no reasonable attorney in the same circumstances would have believed that the prior art references submitted in the Fraudulent Requests by defendants would raise a substantial new question as to patentability or that probable cause existed to bring the Fraudulent Requests for reexamination.

123. Knowing that there was no truth to the statements made in the Request for the '951 Patent, Defendants knowingly and maliciously made misleading characterizations of the claimed prior art and its applicability to the Patents in order to deceive the USPTO, by presenting these statements in about three hundred and fifty (350) pages of documentation, replete with charts and repetitive explanations which Defendants were aware the USPTO Examiners would have to review and which were designed to obfuscate the material misrepresentations.

124. On May 5, 2003, in furtherance of the scheme to defraud the USPTO, and in violation of 18 U.S.C. § 1341, Defendant Sheppard Mullin, mailed to the USPTO a fraudulent request for reexamination of the '319 Patent, in the name of PGDF. The request contained numerous deceptive and fraudulent misrepresentations, including but not limited to:

125. Electronic Mall Reference. Material information bearing on the publication date and public accessibility of the reference was withheld from the USPTO in the request. The only date given in the request for this document is the year 1986. Because any document must have a publication or effective date at least prior to 24 January, 1985 in order to qualify as prior art to the '319 Patent under 35 U.S.C. §102 (b), the submitted document is not "prior art" under 35 U.S.C. § 102(b). Nor is the Electronic Mall a "printed publication" as required by 35 U.S.C. §102 (b). The material fact that the Electronic Mall reference is referred to, within its own

pages, as a "confidential and proprietary manual" was not brought to the attention of the Examiner in the request. Instead, Defendants misrepresented that the *"system"* i.e., not the alleged prior art reference itself, was "available to the public." The request used Electronic Mall in a manner designed to obfuscate and deceive the USPTO, asserting that the claims of the '319 Patent were anticipated and/or obvious in view of the reference, which was not prior art.

126. IVIS Reference. The request represented that "these new prior art references provide teachings not provided during prosecution of the Lockwood '319 Patent." This statement was false. In fact, the IVIS reference had been of record in the file of Plaintiff Lockwood's "grandparent" patent application Serial No. 613,525 ("S/N '524"), now Patent No. 4,567,359 ("'359 Patent") from which the '319 Patent issued as a continuation-in-part. In an amendment during the application prosecution of the '319 Patent of September 19, 1995, the '359 Patent which included IVIS as part of the preferred embodiment, was provided by Plaintiff Lockwood's attorney who mailed to the USPTO examiner copies of both the '359 Patent and S/N '525. Plaintiff Lockwood himself had provided the IVIS reference to the USPTO during the prosecution of the '359 "grandparent" Patent and IVIS was repeatedly incorporated in the preferred embodiment of that patent. This information was a matter of public record and known to Defendants, who misrepresented the reference as "new," as evidenced by the USPTO date-stamp on several pages of the IVIS reference, which matches the date it was received from Plaintiff Lockwood by the USPTO during prosecution, as well as by "bates stamp" numbers on each page of the document from the *Lockwood v. American Airlines, Inc.,* litigation in which the "grandparent" patent was involved.

127. Comp-U-Store Reference. This reference was cited in the request essentially in its entirety and with lack of specificity, as disclosing each and every limitation of claims of the '319 Patent, which in fact it did not disclose. In the prosecution of this request, the Examiner relied on the Defendants' duty of candor in

practicing before the USPTO, and accepted what the request asserted as true, but which was not true. Rather, claim 1 of the '319 Patent indicates to any practitioner before the USPTO how those limitations in claim 1 did not appear in Comp-U-Store, and that Defendants statements in the Fraudulent Requests were false. A person of ordinary skill in this technical field, after reading the '319 Patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in Comp-U-Store (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Comp-U-Store is a misrepresentation to the USPTO.

128. Globecom. Another purported reference, Globecom, was cited by Defendants, in its entirety and with lack of specificity, as showing each and every limitation of claim 1 of the '319 Patent. However, this reference did not teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '319 Patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in Globecom (the entire document being broadly cited) that came within the teaching of at least the claim 1 limitations identified above. Therefore, stating that all limitations of claim 1 are met by Globecom is a misrepresentation to the USPTO.

129. Discount Store News ("DSN"). A purported reference entitled Discount Store News was also cited in its entirety and with lack of specificity as showing each and every limitation of claim 1 of the '319 Patent. However, this reference did not teach or suggest limitations of claim 1. A person of ordinary skill in this technical field, after reading the '319 Patent and the closest prior art, over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, would readily realize there was nothing in DSN (the entire document being broadly cited), that came within the teaching of at least the claim 1 limitations identified

above. Therefore, stating that all limitations of at least claim 1 are met by DSN is a misrepresentation to the USPTO.

130. Cumulative to Prior Art of Record. In furtherance of their effort to deceive the USPTO into determining that a substantial new question of patentability was presented by the request, Defendants stated that "all of these prior art references are closer to the claimed subject matter of the Lockwood '319 Patent than are the prior art references that were of record in the file of the Lockwood '319 Patent," and that "these new prior art references provide teachings not provided during prosecution of the Lockwood '319 Patent." Defendants knew or should have known these statements were false. In fact, none of the references submitted with Defendants' request rose to the level of the closest prior art of record, for example Lockwood's U.S. Patent No. 4,359,631 ("'631 Patent"), over which the '319 Patent was found to be patentable by the Board of Patent Appeals and Interferences, and which, together with its reissue U.S. Patent No. Re. 32,115, has been cited by 209 subsequently issued U.S. patents. Defendants knew or should have known that the references they submitted were merely cumulative to the closest prior art of record, for example, the '631 Patent, and did not raise a substantial new question as to the patentability of the '319 Patent, but they falsely asserted that "all" of their references were superior to the prior art of record and "provid[ed] teachings not provided" in the '319 Patent. A person of ordinary skill in this technical field, after reading the '631 Patent and other prior art of record, would readily realize that the references submitted by Defendants did not even rise to the level of the closest prior art of record in the file of the '319 Patent. Therefore, Defendants' statements that the references they submitted are closer to the claimed subject matter of the '319 Patent than the prior art of record and provide teachings not provided by the '319 Patent are misrepresentations to the USPTO and were made for the purpose of deceiving the USPTO in order to harm Plaintiffs.

///

131. On May 5, 2003, further continuing and supporting their scheme to defraud the USPTO and to harm the property rights of Plaintiffs, Defendant Sheppard Mullin filed a Motion to Stay the Enforcement Proceeding in the District Court of the Southern District of California by mailing fraudulent papers, in violation of 18 U.S.C. § 1341, to the Court stating:

a. "The PanIP Group Defense Fund, Inc., a group made up of sixteen defendants in this and three other related patent cases, has identified extensive, published prior art dating to the early 1980's that unequivocally anticipated the alleged inventions in both U.S. Patent Nos. 5,576,951 (the '951 Patent) and 6,289,319 (the '319 Patent)."

b. "These requests seek reexamination of the '951 and '319 Patents based on prior art references that clearly anticipate and/or render obvious all the elements of independent claims 1 through 10 of the '951 Patent and independent claim 1 of the '319 Patent."

c. "In addition, the requests seek reexamination of dependent claims 2-4 and 6-9 of the '951 Patent and claims 2-6 of the '319 Patent based on anticipation and/or obviousness."

d. "These requests for reexamination are all based on published prior art references that were not considered by the examiner during prosecution of the '951 and '319 Patents."

e. "None of this prior art was identified or considered during prosecution of the patents."

f. "It is likely that reexamination will result in a determination by the USPTO that the patents-in-suit are invalid."

g. "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge."

132. On May 6, 2003, further continuing and supporting their scheme to defraud the USPTO and to harm the property rights of Plaintiffs, Defendant Sheppard Mullin, to delay court proceedings in the District Court of the Southern District of California, mailed fraudulent papers, in violation of 18 U.S.C. §1341, to the Court stating:

h. "PGDF's reexamination requests are based on multiple prior art references that were not in the record during prosecution of these patents. These references predate the earliest patent applications filed by Mr. Lockwood, and clearly anticipate and/or render obvious the inventions allegedly represented in the '951 and '319 Patents."

i. "Defendants have identified prior art that they firmly believe renders Plaintiff's [Lockwood's] patents invalid and they have invoked a procedure to test that belief before the U.S PTO."

j. "Further, since the reexamination of the patents will be an ex parte proceeding they have no incentive to settle this case pending a decision on their motion to stay."

133. On May 16, 2003, Defendants' intention to deprive Plaintiffs, through fraud on the USPTO, of the opportunity to enforce the valid property rights in the Patents was further evidenced by their fraudulent statements in a letter mailed to the Magistrate Judge James F. Stiven of the U.S. District Court for the Southern District of California, in violation of 18 U.S.C. 1341, stating:

k. "Here, both patents have been challenged based on anticipation under 35 U.S.C. § 102(b) and obviousness under 35 U.S.C. § 103. The requests are based on numerous prior art references dating to the early 1980's, before the filing date of the earliest patents in the family of patents that includes the patents in suit. U.S. Patent No. 6,289,319 (the '319 Patent) is challenged *based on ten separate references*, none of which was in the record during examination of

> the '319 Patent. U.S. Patent No. 5,576,951 (the '951 Patent) is *challenged based on five separate references*, none of which was in the record during examination of the '951 Patent. These reference [sic] clearly anticipate every element of the claimed inventions in both the '319 and '951 Patents." [Italics in original].
>
> l. "Both requests for reexamination are based on numerous, clearly applicable, published prior art references. As a result, it is extremely likely that both patents will be ordered into reexamination."

134. In reliance on the deceptive statements of Defendants based upon the Fraudulent Requests, the district court stayed the Enforcement Program pending resolution of the reexamination of the Patents.

135. As a result of Defendants' deceitful statements and reliance on the Fraudulent Requests, the district court granted their Motion to Stay immediately prior to the scheduled Markman hearing which would have adjudicated the infringement of the Patents on the merits, and the Enforcement Proceedings were stayed pending the resolution of the sham reexamination of the Patents unlawfully instigated by Defendants. This stay had the intended effect of stopping Plaintiffs' Enforcement Program, causing great economic loss and the loss of business relationships in the form of targeted licensing agreements and the use of their Patents for over four years of the seventeen-year life of the Patents.

136. From May 5, 2003 through December 5, 2006, the Defendants continued their fraudulent scheme to "put this guy [Lockwood and PanIP] out of business" through the continued use of PGDF website by making fraudulent statements on their Internet website, *YouMayBeNext.com,* regarding the enforceability of the Patents and to obtain money from the general public to continue to finance their scheme, in violation of 18 U.S.C. § 1343.

137. To continue and to support of their scheme to defraud, in violation of 18

///

138. U.S.C. § 1343, Defendant Sheppard Mullin through the website of the PGDF, *YouMayBeNext.com,* fraudulently stated that it "had identified extensive, published prior art dating to the early 1980's that unequivocally anticipated the alleged inventions in both U.S. Patent Nos. 5,576,951 (the '951 Patent) and 6,289,319 (the '319 Patent)." Defendant Sheppard Mullin made these statements knowing they were false with the intent that they would be relied upon and to solicit funds in which to invest back into PGDF, which was commissioned, designed, co-managed, overseen and operated by Sheppard Mullin solely to harm Plaintiffs' Patents.

139. The granting of the Fraudulent Requests for reexamination had the intended effect of proximately causing Plaintiffs severe economic harm in having to defend the Patents before the USPTO and has rendered Plaintiffs unable to use, enforce, sell, or license their Patents for several years over the life of the Patents.

140. Further, on or about March 19, 2004, Defendants used the existence of the false and Fraudulent Requests and Plaintiffs' severely injured economic situation to coerce Plaintiffs into dismissing the Enforcement Proceedings and execute a Covenant Not to Sue and Release Agreement with PGDF and the defendants, thereby effectively shutting down the Enforcement Program.

141. The Patents are under a continuing threat of a similar fraud being perpetrated, given that patent laws and the USPTO rules and regulations allow multiple requests for reexaminations even based on the same prior art references, and given that Defendants through PGDF have repeatedly made statements that their goal is to put Plaintiffs out of business. Under the rules and regulations of the USPTO, Defendants, at any time, may instigate deceptive reexamination proceedings in order to prevent Plaintiffs from ever enforcing their Patents. Requesters can submit multiple requests while a patent is in reexamination, delaying endlessly the final decision to issue a certificate or to amend claims. Since May 5, 2003 the Patents have remained under a continuing threat of a repeated fraud being perpetrated, in that

Defendants have made statements that they intended to put Plaintiff out of business and because the USPTO rules and regulations allow multiple requests for reexamination even using the same purported prior art references. See 35 U.S.C.A. § 303(a) (2002).

142. Under Defendants' threat and under the cloud of reexamination, Plaintiffs were caused the loss of over four years of licensing and royalty revenues from presumptively valid Patents during strong years in the economy. Many companies refused to license, stating that their reason was because of the reexamination.

143. Over four years after the sham reexamination proceedings were instigated by Defendants, the reexamination proceedings for the Patents resolved completely in Plaintiff's favor, on July 17, 2007 and on January 29, 2008. The USPTO reconfirmed the patentability of the inventions disclosed and claimed therein, without material change in the scope or breadth of their coverage, thus effectively confirming that none of the Defendants' representations in the Fraudulent Requests about the validity of the inventions disclosed and claimed in the Patents were accurate or created a substantial new question of patentability.

144. As a proximate cause of Defendants' malicious and fraudulent conduct, Plaintiffs have suffered a loss of business reputation and business opportunities.

145. As a proximate cause of Defendants' malicious and fraudulent conduct, Plaintiffs suffered devaluation, loss of profits and other economic loss on the use of the valid Patents in the approximate amount of $35,000,000.

146. As a proximate cause of Defendants' fraudulent and malicious conduct, Plaintiffs have suffered injury to property by being required to expend vast amounts of attorneys' costs and fees to defend valid Patents during the reexamination process which was fraudulently and unlawfully instigated by Defendants.

///

///

FIFTH CAUSE OF ACTION

Conspiracy to Violate the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §1962(d)

(Against All Defendants)

147. Paragraphs 1 to 146 are incorporated herein.

148. In April of 2002, Defendant Hangartner was an attorney at the law firm of Liu & Liu in San Diego, California. In March of 2002, Plaintiff PanIP filed patent infringement complaints against ten electronic commerce. Defendant Hangartner represented four of the defendants: Snow Country Ski Shop, Inc., Peekay Corporation, Dickson Supply Co., and Backcountry Experience, Inc. Defendant Hangartner organized the defendants into an enterprise with a website entitled "Panip Defendants", at URL *www.PanipCase.Homeip.net*, and was responsible for false and misleading articles in newspapers and magazines about the scope and validity of the Patents. Hangartner's four clients licensed the PanIP patent portfolio on October 28, 2002. The website was in operation between May 25, 2002 and September 23, 2002. Hangartner's picture and his contact information at Liu & Liu were prominently featured under the "Defendants" link.

149. PanIP filed patent infringement complaints against several electronic commerce companies on September 11, 2002. Defendant Hangartner contacted several of these defendants and organized them into the PGDF enterprise following the same pattern of the earlier "Panip Defendants" website, by creating a replica website with the URL *www.YouMayBeNext.com*.

150. In October 2002, Hangartner left the Liu & Liu law firm and joined Sheppard Mullin with an agreement that Defendant Sheppard Mullin would commission and support the scheme to defraud the USPTO through PGDF's instigation of malicious and fraudulent reexamination proceedings. Between November 29, 2002 and December 5, 2006, Defendant Hangartner's picture and contact information at Sheppard Mullin were prominently featured on the PGDF

website. Defendant Hangartner was promoted to partner at Sheppard Mullin by February 8, 2005.

151. In furtherance of the agreement to enter into a scheme to defraud the USPTO, Defendant Hassid signed the Fraudulent Requests and Defendants mailed the Fraudulent Requests by U.S. Mail on May 5, 2003 in violation of 18 U.S.C. § 1341.

152. On May 5, 2003, further continuing and supporting their scheme to defraud the USPTO and to harm the property rights of Plaintiffs, Defendant Sheppard Mullin filed a Motion to Stay the Enforcement Proceeding in the District Court of the Southern District of California by mailing fraudulent papers, in violation of 18 U.S.C. § 1341 relying on the malicious reexamination based on the Fraudulent Requests and making several false statements regarding the validity of the Patents.

153. On May 6, 2003, further continuing and supporting their scheme to defraud the USPTO and to harm the property rights of Plaintiffs, Defendant Sheppard Mullin, to delay court proceedings in the District Court of the Southern District of California, mailed fraudulent and deceptive statements, in violation of 18 U.S.C. §1341, to the Court.

154. On May 16, 2003, Defendants' intention to deprive Plaintiffs, through fraud on the USPTO, of the opportunity to enforce the valid property rights in the Patents was further evidenced by their fraudulent statements in a letter mailed to the Magistrate Judge James F. Stiven of the U.S. District Court for the Southern District of California, in violation of 18 U.S.C. §1341.

155. As a result of Defendants' deceitful statements and reliance on the Fraudulent Requests, the district court granted their Motion to Stay immediately prior to the scheduled "Markman" hearing which would have adjudicated the infringement on the merits, and the Enforcement Proceedings were stayed pending the resolution of the sham reexamination of the Patents unlawfully instigated by

Defendants. This stay had the intended effect of shutting down the Plaintiffs' ability to use in any way or to derive benefits from the valid Patents.

156. In reliance on the deceptive mischaracterization of alleged pieces of prior art submitted by Defendants in their Fraudulent Requests for reexamination, the USPTO did grant the Fraudulent Requests, which had the intended effect of stopping Plaintiffs' Enforcement Program, causing great economic loss and the loss of business relationships in the form of targeted licensors and the use of their Patents for over four years of the seventeen-year life of the Patents.

157. From May 5, 2003 to December 5, 2006, the Defendants continued and supported their fraudulent scheme to "put this guy [Lockwood and PanIP] out of business" and to harm the rights to the Patents through the continued use of PGDF website by making fraudulent statements on their Internet website, *YouMayBeNext.com,* regarding the enforceability of the Patents and to obtain money from the general public to continue to finance their scheme.

158. To continue and to support of their scheme to defraud, in violation of 18 U.S.C. §1343, Defendant Sheppard Mullin through the website of the PGDF, *YouMayBeNext.com,* fraudulently stated that it "had identified extensive, published prior art dating to the early 1980's that unequivocally anticipated the alleged inventions in both U.S. Patent Nos. 5,576,951 (the '951 Patent) and 6,289,319 (the '319 Patent)." Defendant Sheppard Mullin made these statements knowing they were false with the intent that they would be relied upon and to solicit funds in which to invest back into PGDF, which was commissioned, designed, co-managed, overseen and operated by Sheppard Mullin solely to harm Plaintiffs' Patents.

159. The granting of the Fraudulent Requests for reexamination had the intended effect of proximately causing Plaintiffs severe economic harm in having to defend the Patents before the USPTO and has rendered Plaintiffs unable to use, enforce, sell, or license their Patents for several years over the life of the Patents.

/ / /

160. Further, on or about March 19, 2004, Defendants used the existence of the false and Fraudulent Requests and Plaintiffs' severely injured economic situation to intimidate Plaintiffs into dismissing the Enforcement Proceedings and execute a Covenant Not to Sue and Release Agreement with PGDF and the defendants, thereby effectively shutting down the Enforcement Program.

161. Further, under the rules and regulations of the USPTO, Defendants at any time may instigate reexamination proceedings in order to prevent Plaintiff from ever enforcing his Patents, which is the stated intent of the Defendants.

162. Under Defendants' threat and under the cloud of reexamination, Plaintiffs were caused the loss of over four years of licensing and royalty revenues from presumptively valid Patents during strong years in the economy. Many companies refused to license, stating that their reason was because of the reexaminations.

163. For over a four and one-half year period, Defendants have agreed to perpetrate their fraud by demonstrating a total disregard for abiding by federal law governing the duty of candor, USPTO rules and regulations and the termination of their fraud. Defendant Sheppard Mullin was mailed all correspondence between the USPTO and Plaintiffs' attorney, which described their fraud, but Defendants ignored their duty to inform the USPTO. Defendants ignored their responsibilities arising from having submitted the two Fraudulent Requests for reexamination and failed to abide by the rules and regulations of the USPTO and their duty of candor.

164. Since May 5, 2003 the Patents have remained under a continuing threat of a repeated fraud being perpetrated, in that Defendants have made statements that they intended to put Plaintiffs out of business and because the USPTO rules and regulations allow multiple requests for reexaminations even using the same purported prior art references. See 35 U.S.C.A. § 303(a) (2002).

165. As a proximate cause of Defendants' malicious and fraudulent conduct, Plaintiffs have suffered a loss of business reputation and business opportunities.

166. As a proximate cause of Defendants' malicious and fraudulent conduct, Plaintiffs suffered devaluation, loss of profits and other economic loss on the use of the valid Patents in the approximate amount of $35,000,000.

167. As a proximate cause of Defendants' fraudulent and malicious conduct, Plaintiffs have suffered injury to property by being required to expend vast amounts of attorneys' costs and fees to defend the valid Patents during the reexamination process which was fraudulently and unlawfully instigated by Defendants.

168. After the December 17, 2006 meeting between Plaintiffs' attorneys and Defendant Sheppard Mullin, any trace, listing, or contact information for Mr. Hangartner was removed from the Sheppard Mullin website between December 23, 2006 and January 2, 2007 and he was no longer employed by the firm. He is currently a sole-practitioner working in San Diego, California, as an intellectual property attorney.

169. Steve P. Hassid was an associate attorney at Sheppard, Mullin, Richter & Hampton's Los Angeles office in 2002 and left the firm around February of 2006.

WHEREFORE, Plaintiffs pray for relief:

1. For compensatory damages, including but not limited to lost profits, licensing revenues, royalties, loss of business reputation, expenses, according to proof, but believed by Plaintiffs to be not less than $35,000,000;
2. For Plaintiffs' attorneys' fees and costs in defending against the sham reexamination proceedings instigated by Defendants;
3. For treble damages under 18 U.S.C. 1964(c);
4. For a finding that Defendants' conduct has been willful and/or malicious;

///

///

///

5. For punitive and enhanced damages;

6. For Plaintiffs' attorneys' fees and costs in prosecuting this action;

7. For such other and further relief as the circumstances and proof at trial warrant.

Dated: July 15, 2009

Respectfully Submitted,

HOWARTH & SMITH
DON HOWARTH
SUZELLE M. SMITH
LEE CRAWFORD-BOYD

By: _____
Lee Crawford-Boyd

Attorneys for Plaintiff
LAWRENCE B. LOCKWOOD

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: July 15, 2009

Respectfully Submitted,

HOWARTH & SMITH
DON HOWARTH
SUZELLE M. SMITH
LEE CRAWFORD-BOYD

By: _____
Lee Crawford-Boyd

Attorneys for Plaintiff
LAWRENCE B. LOCKWOOD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge John F. Walter and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

CV09- 5157 JFW (AGRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE B. LOCKWOOD, PANIP, LLC, PLAINTIFF(S) v. SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, JONATHAN HANGARTNER; STEVE P. HASSID, DEFENDANT(S).	CASE NUMBER CV09-5157 JFW (AGRx) **SUMMONS**

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Howarth & Smith, whose address is 523 West Sixth Street, Suite 728, Los Angeles, California 90014. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUL 15 2009

By: Natalie Gongora
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
LAWRENCE B. LOCKWOOD, PANIP, LLC

DEFENDANTS
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP., JONATHAN HANGARTNER; STEVE P. HASSID

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
HOWARTH & SMITH (213) 955-9400
523 West Sixth Street, Suite 728
Los Angeles, California 90014

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☑ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT **JURY DEMAND:** ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☑ **MONEY DEMANDED IN COMPLAINT: $** According to proof

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Action brought for claims arising under U.S. patent laws subject to 28 U.S.C. section 1338(a) and claims arising under 18 U.S.C. section 1964(c).

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS
PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

TORTS
PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE / PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☑ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV09-5157

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Lawrence B. Lockwood - San Diego, California PanIP, LLC - San Diego, California

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Sheppard, Mullin, Richter & Hampton, LLP - Los Angeles, California Steve P. Hassid - Los Angeles, California	Jonathan Hangartner - San Diego, California

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles, California - All claims	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** July 15, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))