

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HAKAN LANS,

Plaintiff

Civil Action No.: 97-2523 (JGP)

Civil Action No.: 97-2526 (JGP)

v.

GATEWAY 2000, INC.
DELL COMPUTER COMP.,

Defendants

UNIBOARD AKTIEBOLAG

Plaintiff,

Civil Action No.: 99-3153 (JGP)

v.

ACER AMERICA CORP., ET AL.

Defendants.

**POSTHEARING BRIEF OF INTERVENORS ADDUCI, MASTRIANI &
SCHAUMBERG., L.L.P., AND LOUIS S. MASTRIANI, ESQ.**

Dated: April 29, 2005

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**POSTHEARING BRIEF OF INTERVENORS ADDUCI, MASTRIANI &
SCHAUMBERG., L.L.P., AND LOUIS S. MASTRIANI, ESQ.**

I. INTRODUCTION

Lans' sworn testimony has undergone a metamorphosis since the imposition of sanctions and is no more credible today than when the Court earlier found that Lans' "failure to indicate any doubts about [the Uniboard] assignment until it threatened his litigation" rendered the case "exceptional" justifying an award against him of attorney's fees. *See* September 6, 2001, Mem. Op. at 12. Prior to the instant Motion for Reconsideration, Lans' Declarations filed with the Court were consistent with the substance of his written communications with both Intervenor and Delphi. However, the substance of Lans' Declaration in support of his Motion for Reconsideration and his oral testimony both at his deposition and during the evidentiary hearing no longer correspond with his earlier written communications.

In litigating Lans' and Uniboard's patent cases, Intervenor relied upon Lans' account of events as embodied in an extensive number of oral and written communications. Lans' statements, both written and oral, made at the time of the litigation were corroborated by independent documentary sources as well as by Lans' Swedish attorneys and accountants. The fact that Lans has now disavowed his written communications and those of his Swedish professionals does not render Intervenor's reliance unreasonable, let alone sanctionable under 28 U.S.C. § 1927.

II. FACTS

Lans' story has even continued to evolve since he initially filed his Motion for Reconsideration. As set forth in detail in Intervenor's Prehearing Brief, during his recent deposition Lans claimed for the very first time in these proceedings that he did not author an October 8, 2000, summary of facts that originated from his email address and that reflected his

personal editing. *See* Intervenor's Prehearing Brief at 3-7. It is clear that Lans' efforts at disavowal of that summary are prompted by the realization that it fully supports Intervenor's historical understanding of the facts, and not Lans' current version. His story also expanded in other ways during his testimony at the evidentiary hearing.

On March 24, 2005, Lans testified for the first time that, during his initial meetings with Mr. Mastriani on September 5-6, 1996, he informed Mr. Mastriani of the assignment of the '986 patent to Uniboard and instructed Mr. Mastriani to obtain documents related to the assignment from his former attorney, Mr. Gunnar Berg. *See* March 24, 2005, hearing Transcript at 35, 60-62. This testimony was not only baseless, it came as a complete surprise to Intervenor. Lans did not even make this highly relevant assertion in his Declaration in support of his Motion for Reconsideration or in any of his pleadings. He also did not reveal this allegation in response to any questions during his deposition.¹

Based upon Lans' surprise testimony, Intervenor provided the Court with the original copy of Mr. Mastriani's handwritten notes taken during his September 5-6, 1996, meeting with Lans. *See* Mastriani Hearing Exhibit 10. Nowhere in Mr. Mastriani's notes is there any reference to Gunnar Berg or an assignment of the '986 patent.² Indeed, a September 5 entry by Mr. Mastriani clearly states: "He [Lans] is the sole owner of the '986 patent never transferred or assigned." *See id.* at Bates AMS 007764; *also see* May 10, 2004, Affidavit of Louis Mastriani at Paragraph 12; May 6, 2004, Affidavit of Robert Westerlund at Paragraphs 4-5.

¹ To this day, after having lost the case and having been sanctioned for failing to apprise Intervenor, defendants and the Court of the existence and significance of the assignment to Uniboard, Lans is still ambiguous about the ownership of the patent: "I'm thinking in the following way. I am the registered [*sic*] owner and Uniboard is the owner of the rights. So, in my world, Hakan Lans and Uniboard is the owner jointly." *See* March 24, 2005, Transcript at 78.

² The irony of this entire matter is that, had Mr. Lans been straightforward with his attorneys, the '986 patent rights could have been pursued on behalf of Uniboard, or jointly on behalf of Uniboard and Lans, without any adverse consequences.

Lans' testimony at the March 24, 2005, hearing is irreconcilable with the sworn Declaration he submitted to the Court in August 1999. As the Court will recall, after Gateway's discovery of the document assigning the '986 patent to Uniboard, Lans filed a Declaration explaining that he had forgotten about the assignment:

9. Inasmuch as I understood that the assignment was invalid, I subsequently forgot that I had signed the Assignment and Declaration document.

...

10. Until seeing a copy of this Assignment and Declaration document provided by Gateway, I had not recalled that I had signed this Assignment and Declaration document.

See Lans Dep. Exhibit 20 at Bates AMS 255821 (August 22, 1999, Declaration of Hakan Lans).

Lans was either dissembling when he signed his Declaration in August 1999 stating he had forgotten the Assignment or he was testifying falsely on March 24, 2005, when he stated for the first time that he had told Mr. Mastriani about the Assignment in September 1996. Lans cannot argue that Mr. Mastriani or Intervenors foisted the substance of the August 22, 1999, Declaration upon Lans, because it is plain from the transmittal letter accompanying a previous signed version of the Declaration (not filed) that the substance of the Declaration originated with Lans and that it was transmitted to Intervenors by Lans' Swedish attorneys, Delphi. *See* Exhibit 1 at Bates AMS 005367.

Lans' March 24, 2005, testimony that he directed Intervenors to obtain information from Gunnar Berg is also inconsistent with the representations by Lans, confirmed by Delphi, regarding the relationship between Gunnar Berg and Lans. As Lans testified during the hearing, he had filed a bar complaint against Mr. Berg. *See* March 24, 2005, Transcript at 66. Delphi attorney Peter Utterstrom informed Intervenors in an August 18, 1999, Memorandum of his opinion that Mr. Berg had tried to steal the '986 patent from Lans. *See* Exhibit 2.

Lans also sent Intervenors a draft interrogatory response on September 16, 1999, in which he stated that Gunnar Berg refused Lans access to his papers "both before and after our relationship was terminated." *See* Exhibit 3 at Bates AMS 267140. In light of the antipathy between Lans and Mr. Berg and Mr. Berg's alleged refusal to provide Lans with documents, it is not credible that Lans instructed Mr. Mastriani in September 1996 to obtain essential documents from Mr. Berg.

Lans would have the Court believe that the myriad inconsistencies between what actually transpired with the assignment to Uniboard, what he chose to tell Intervenors about that assignment, what he testified to in his previously filed Declarations and discovery responses and what his current version of events is were occasioned by his extremely hectic schedule and poor record keeping. He testified that, during the course of Intervenors' representation, he worked daily from 8:00 a.m. to 3 or 4:00 a.m., carefully reading up to 36,000 pieces of correspondence a year. March 24, 2005, Transcript at 18. His busy schedule was the result of his work on developing what has been referred to as the "STDMA" navigation patent. This project apparently took more time than Lans initially thought as there were allegedly hundreds of people involved at a cost to others, such as the European Commission, exceeding \$300 million. March 25, 2005, Transcript at 7. Unfortunately, Lans failed to devote the same time and attention to providing accurate information to Intervenors who were involved on his behalf in a project that netted him personally approximately \$15 million.

Lans admitted that during the course of Intervenors' representation he failed to spend time reviewing documents exchanged with Intervenors:

To read carefully to me means that I sit down a day with a paper and I read it, and I switch off telephones, and I concentrated. I didn't do that.

March 25, 2005, Transcript at 9.

I have not spend [*sic*] much time. I have spent the time I could on the document, the time available. And I would say that if I start to read the document at 3 o'clock during the night, I don't have full capacity. But that is the best I can do.

Id. at 10.

Lans acknowledged that an assignment document whereby he gave up his ownership rights was an important document. March 24, 2005, Transcript at 63. Even so, he acknowledged to the Court that he did not bother keeping a copy of it and other important documents for himself or for Uniboard. March 25, 2005, Transcript at 16. Lans' implausible excuse was that he "simply had no storage." *Id.* at 17. Furthermore, he never even requested a copy of the assignment agreement from Gunnar Berg when he claims he knew it existed and understood that it would be important to Intervenor's efforts on his behalf. March 24, 2005, Transcript at 65 ("Q: And it is a fair statement, is it not, that you never, ever called up Mr. Berg and asked for a copy of the assignment agreement? Isn't that correct? A: That is correct. I just offered to do that. Q: I know you offered but you didn't do it, right? A: No.")

Lans' excuses of a busy schedule, inattentiveness and admittedly poor record keeping practices are simply not credible. Lans admitted that the combined efforts by Intervenor and Delphi at enforcing the '986 patent yielded him approximately \$15 million. *See* March 24, 2005, Transcript at 98. Even the wealthiest individuals in the world would not treat an income stream netting \$15 million in the lackadaisical fashion Lans claims he treated the '986 patent enforcement efforts.

Additional evidence that Lans knowingly placed himself in a position whereby sanctions were properly imposed upon him alone is an August 28, 2001, electronic mail message his current counsel placed into evidence on March 24, 2005. *See* Mastriani Exhibit 28, attached

hereto as Exhibit 4. That message from Delphi attorney Peter Utterstrom to Intervenor recounts Lans' thought process in rejecting an offer by Gateway to settle the current case without Lans paying a significant attorneys' fees award. Mr. Utterstrom recounted that Lans would be prepared to pay hundreds of thousands of dollars in sanctions rather than grant a license to one of his other patents. *Id.*

This message belies Lans' characterizations of himself as lacking the requisite sophistication to consider the consequences of his conduct. *See, e.g.*, March 24, 2005, Transcript at 132 ("I have no own opinion, I trust what the lawyers are telling me."). It is evident from the contents of the August 28, 2001, email, as well as Lans' many years of successful dealings with attorneys of many nationalities in licensing and litigating the '986 patent before he even met Intervenor,³ that Lans is a shrewd intellectual property owner with extensive experience as a litigant.

He made cost/benefit determinations as to the allocation of his time between various projects, choosing to forego attention to the enforcement of the '986 patent in favor of the attempted exploitation of the STDMA patent. Having made approximately \$15 million from the '986 patent (*see* March 24, 2005, Transcript at 98), he still chose to favor the STDMA patent, ultimately making the conscious decision that he would rather pay "hundreds of thousands of dollars" in sanctions in the case at bar rather than license the STDMA patent to Gateway.

Lans is a man who is capable of making intelligent and informed decisions. *See, e.g.*, March 24, 2005 Transcript at 7-9 (extolling Lans' credentials). He simply made very poor decisions in the case at bar by failing to inform his attorneys of the assignment of the '986 patent

³ *See, e.g.*, March 24, 2005, Transcript at 89 ("Q: You had a prior attorney to do the agreement, isn't that Mr. Berg? A: I think it was, could be, could be. Q: Because you had several attorneys, it is a fair statement that you had several attorneys over the years before AMS that represented you and did legal work for you, correct? A: That is correct.").

and then spinning an ever-growing web of deceit to cover up the fact that he withheld important information from people who had every incentive to maximize his recovery. The quantum of evidence compellingly belies Lans' self-serving assertion that he was confused and completely relied on the advice of his attorneys. At every juncture where it suits his purpose, Lans blames his attorneys for the adverse consequences of his actions. *See, e.g.*, March 24, 2005, Transcript at 38, 72-74, 130-132, 134-138, 150; March 25, 2005, Transcript at 5-8, 12-16; Intervenor's Prehearing Brief at 7-8. Indeed, despite the unrebutted evidence of record, Lans refuses to accept any responsibility for the circumstances he finds himself in today. (*See* March 24, 2005, Transcript at 141, lines 18-23.)

III. ARGUMENT

A. Reconsideration Is Unwarranted

Reconsideration is unwarranted in the case at bar because the Court's November 23, 1999, Memorandum Opinion accurately identified the cause of Lans' predicament: "The Court cannot escape the conclusion that Lans chose to conceal all information about the assignment, possibly even from his attorneys, until confronted with irrefutable evidence that the assignment had occurred." *Lans v. Gateway 2000, Inc.*, 84 F. Supp.2d 112, 122 (D.D.C. 1999).

The extensive documentary record adduced by Intervenor's also confirms the Court's conclusion in its September 6, 2001, Memorandum Opinion that "Lans has only himself to blame" and if he had been better with his record keeping and "more forthcoming" with Intervenor's, he might not have to defend the attorneys' fees motions. *Id.* at 11.

The Court correctly apprehended the substance of the communications between Lans and Intervenor's regarding the assignment when it imposed sanctions on Lans/Uniboard alone in 2001. Nothing new has emerged in connection with Lans' Motion for Reconsideration that

provides a sound legal basis for reconsideration.⁴ Indeed, Lans admitted, in response to direct questioning from the Court, that he had neither communicated the existence of the assignment to Intervenor nor provided them with a copy of that document:

Q: Are you telling the Court that you communicated to AMS that you signed an agreement transferring your ownership rights, you, Lans, to the patent to Uniboard?

A: No.

Q: So the answer is no, correct?

A: Yes, that is correct.

March 24, 2005, Transcript at 62. And Lans never gave Intervenor a copy of the assignment document – "I simply did not have the agreement so that is correct." *Id.* In light of these admissions alone, reconsideration is completely unwarranted. Moreover, these admissions necessarily expose the falsity of Lans' eleventh hour claim that he had informed Mr. Mastriani of the existence of the assignment in their September 5-6, 1996, meetings.

Generally, Courts treat motions for reconsideration as motions to alter or amend judgment pursuant to Rule 59(e) when they are filed within ten days of the entry of the judgment at issue. *See W.C. & A.N. Miller Cos. v. United States*, 173 F.R.D. 1, 3 (D.D.C. 1997) (citing *Derrington-Bey v. District of Columbia Dep't of Corrs.*, 39 F.3d 1224, 1226 (D.C. Cir. 1994)); FED. R. CIV. P. 59(e). While the court has considerable discretion in ruling on a Rule 59(e) motion, the reconsideration and amendment of a previous order is an extraordinary measure and "need not be granted unless the district court finds that there is an 'intervening change of

⁴ As has been said, "The thing that hath been, it is that which shall be; and that which is done is that which shall be done: and there is no new thing under the sun. Is there any thing whereof it may be said, See, this is new? It hath been already of old time, which was before us." *Ecclesiastes* 1:9-10.

controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996).⁵

When a motion for reconsideration is filed beyond the ten days pursuant to Rule 59(e), which is the situation in this case, Courts will ordinarily consider the motion under an even higher standard pursuant to Rule 60(b). *See Computer Prof'ls for Soc. Responsibility v. United States Secret Serv.*, 315 U.S. App. D.C. 258, 72 F.3d 897, 903 (D.C. Cir. 1996); FED. R. CIV. P. 59(e), 60(b).

Although Plaintiffs are correct that motions to reconsider interlocutory orders are within the discretion of the trial court, they are subject to appellate review under the abuse of discretion standard, "[t]his discretion to reconsider interlocutory orders is tempered somewhat by the Supreme Court's [admonition] that 'courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice.'" *Keystone Tobacco Co. v. United States Tobacco Co.*, 217 F.R.D. 235, 237 (D.D.C. 2003) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988)) (internal and additional citations omitted).⁶

⁵ A motion for reconsideration is "not simply [an] opportunity to reargue facts and theories upon which [a] court has already ruled," *State of New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995), nor is it a vehicle for presenting theories or arguments that could have been advanced earlier. *See W.C. & A.N. Miller Companies*, 173 F.R.D. at 3; *see also, Davis v. Lehane*, 89 F. Supp. 2d 142, 149 (D. Mass. 2000) ("motion for reconsideration is not an opportunity for a party to improve upon his arguments or try out new arguments; nor is it properly a forum for a party to vent his dissatisfaction with the Court's reasoning. Rather . . . there must be a reason why the court should reconsider [a] prior decision and [the movant] must set forth facts or law of a strongly convincing nature to induce the court to reverse [the] prior decision.").

⁶ Other courts apply a variety of different standards when confronted with a motion for reconsideration under Rule 54(b) that underscore that reconsideration is unwarranted in the instant action. *See, e.g., Gallant v. Telebrands Corp.*, 35 F. Supp. 2d 378, 394 (D.N.J. 1998) (resolving a Rule 54 motion by determining whether the parties proffer supplemental evidence or new legal theories); *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) ("reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court"); *A&H Sportswear Co., Inc. v. Victoria's Secret Stores, Inc.*, 2001 U.S. Dist. LEXIS 11488 (E.D. Pa. 2001) (indicating that "courts tend to grant motions for reconsideration [under Rule 54(b)] sparingly and only upon the grounds traditionally available under Fed. R. Civ. P. 59(e)"); *Neal v. Honeywell, Inc.*, 1996 U.S. Dist. LEXIS 15954 (N.D. Ill. Oct. 25, 1996) (noting that such motions are "best characterized as a common law motion for

Thus, in the interests of finality, the Court generally will reconsider an interlocutory order "only when the movant demonstrates (1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error of law in the first order." *Keystone Tobacco Co.*, 217 F.R.D. at 237 (internal citation omitted). Additionally, this Court has required litigants to bring motions under Rule 54 "within a reasonable period after an interlocutory order during the pendency of the litigation." *Moore v. Hartman*, 332 F. Supp. 2d 252, 257 n. 7 (D.D.C., 2004) (citing *Tax Analysts v. IRS*, 152 F. Supp. 2d 1, 5 n.4 (D.D.C. 2001)). None of these circumstances is present in the instant action.

B. There Is No Legally Cognizable Basis For Sanctions Under 28 U.S.C. § 1927

Even were the Court to entertain reconsideration, there is no legally sufficient basis upon which to impose sanctions against Intervenor under 28 U.S.C. § 1927. In the myriad pleadings associated with the Motion for Reconsideration neither Lans nor the computer companies have been able to cite a single case where, even were it the case here, counsel were sanctioned under § 1927 for failure to conduct an adequate prefiling inquiry. The simple reason for this glaring absence of authority is that Intervenor's inability to discover an assignment document, the existence of which was neither apparent nor mentioned by their client and, in fact, consistently denied, was not even negligent, let alone reckless.

1. 28 U.S.C. § 1927 Is A Drastic Provision

Negligence or inadvertence is insufficient to support the imposition of sanctions under § 1927: the party seeking sanctions under this provision bears the burden of showing that

reconsideration" and applying the test of whether the court "has patently misunderstood a party," "has made a decision outside the adversarial issues presented to the Court by the parties," "has made an error not of reasoning but of apprehension," or "a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the Court") (quoting *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (dealing with a post-judgment motion to reconsider)).

opposing counsel acted recklessly, namely, that the counsel acted in disregard of a danger or known risk to others. *Naegele v. Albers*, 355 F. Supp.2d 129, 147-48 (D.D.C. 2005). *See also McMahan v. Toto*, 256 F.3d 1120, 1129 (11th Cir. 2001), ("Something more than a lack of merit is required for § 1927 sanctions or they would be due in every case.").

Recklessness under § 1927 is a high standard. *United States v. Wallace*, 964 F.2d 1214, 1219-20 (D.C. Cir. 1992). "Where courts have employed section 1927, the attorney's behavior has been repeated or singularly egregious." *Id.* Behavior necessary to support the imposition of sanctions under § 1927 is that which evidences "a serious and studied disregard for the orderly process of justice." *See LaSalle Nat'l Bank v. First Ct. Holding Group, LLC*, 287 F.3d 279, 288-89 (3rd Cir. 2002); *Barney v. Holzer Clinic, Ltd.*, 110 F.3d 1207, 1212 (6th Cir. 1997); *Pacific Dunlop Holdings, Inc. v. Barosh*, 22 F.3d 113, 119 (7th Cir. 1994). At the very worst, interpreting all inferences against Intervenor, their inability to discover the existence of the assignment to Uniboard did not constitute a serious and studied disregard for the orderly process of justice.

In a case squarely on point, the Ninth Circuit held that an attorney who *knowingly* filed an infringement action on behalf of a former patent owner who transferred the patent prior to the filing of the infringement action could not be sanctioned under § 1927. *See Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998) (knowingly bringing an infringement action on behalf of a client known to no longer own that patent shows ignorance or negligence, but does not compel a finding of recklessness or bad faith). If bringing an infringement action on the basis of a patent the attorney knows does not belong to the plaintiff is not sanctionable under § 1927, bringing such an action in reliance upon the client's representation that he owns the patent and that there has been no assignment cannot possibly be sanctionable under § 1927.

28 U.S.C. § 1927 is a "drastic sanction provision." *In re: Pittcon Indus., Inc.*, 953 F.2d 1383, *3 (4th Cir. 1992) (unpublished). It is not a "catch all" provision designed to serve as a basis for sanctioning any and all conduct courts want to discourage. *Waymark Corp. v. Porta Sys. Corp.*, 334 F.3d 1358, 1365 (Fed. Cir. 2003). It must be strictly construed in favor of the attorney against whom sanctions are sought. *Proctor & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 526 (5th Cir. 2002); *Lee v. L.B. Sales, Inc.*, 177 F.3d 714, 718 (8th Cir. 1999); *Peterson v. BMI Refractories*, 124 F.3d 1386, 1395 (11th Cir. 1997); *Indianapolis Colts v. Mayor and City Council of Baltimore*, 775 F.2d 177, 182 (7th Cir. 1985); *Dreiling v. Peugeot Motors of Am., Inc.*, 768 F.2d 1159, 1165 (10th Cir. 1985). It simply does not fit the circumstances of the case at bar.

2. An attorney may rely upon his client without fear of sanctions

It is a principle of law unrebutted by Lans or the computer companies that, where the client misrepresents an otherwise corroborated fact to an attorney, the client alone is liable for any sanctions occasioned by the misrepresentation, and the attorney cannot be liable under § 1927. *See Schwartz v. Millon Air, Inc.*, 341 F.3d 1220, 1223-24 (11th Cir. 2003) ("just being duped is not sanctionable."); *Oliveri v. Thompson*, 803 F.2d 1265, 1277-78 (2d Cir. 1986) ("Section 1927 was not intended to require an attorney to pass judgment on the credibility of his client on pain of a monetary sanction . . ."). *See also In re Big Rapids Mall Assocs.*, 98 F.3d 926, 932 (6th Cir. 1996) (where a client misleads an attorney as to the facts of a lawsuit but the attorney otherwise has a reasonable basis to proceed, the client alone is responsible for any sanctions).

3. An attorney may rely upon the investigation of another law firm

An attorney's obligation to comply with the requirement that a pleading be well grounded in fact does not preclude the attorney from reliance on information from other persons. *Dubois*

v. United States Dept. of Agric., 270 F.3d 77, 82 (1st Cir. 2001); *Forbes v. Eagleson*, 228 F.3d 471, 488 (3rd Cir. 2000).⁷ "An attorney receiving a case from another attorney is entitled to place some reliance upon that attorney's investigation." *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 446 (5th Cir. 1992).

As the record demonstrates, Intervenor's placed reliance upon Lans' Swedish attorneys, Delphi, for matters clearly within their purview. *See, e.g.*, January 29, 1998, Memorandum from Mr. Mastriani to Mr. Utterstrom attached hereto as Exhibit 5. ("Delphi's primary continuing responsibility in this project has been to gather all pertinent information regarding the ownership of the graphics patents, the structure of Uniboard and any other company owned by Mr. Lans. Delphi is also responsible for communicating with and controlling the client who is apparently out of control as evidenced by his statement to me that he 'really has no interest in the project' and 'it does not mean anything' to him because he receives nothing from the licensing revenues.")

Intervenor's reliance upon Delphi was perfectly reasonable given the facts that Lans resides in Sweden and many of the documents underlying the litigation were written in Swedish and were governed by Swedish law. Delphi's attorneys were in a far better position, linguistically, educationally and geographically,⁸ to investigate matters pertaining to facts to be found in Sweden, including knowledge of any assignment of the '986 patent from Lans or

⁷ There is significant authority from other Circuits that sanctions under 28 U.S.C. § 1927 are unavailable as a matter of law based upon allegations of the variety made by the computer companies in the case at bar, *i.e.*, that Intervenor's failed to conduct an adequate prefiling inquiry. *See, e.g., Zuk v. Eastern Pa. Psychiatric Inst. of Med. Coll. of Pa.*, 103 F.3d 294, 297 (3rd Cir. 1996); *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996). Because § 1927 is aimed solely at vexatious multiplication of proceedings, Fed. R. Civ. P. 11, rather than § 1927, is the only available sanction provision for a defective prefiling inquiry by an attorney. *DeBauche v. Trani*, 191 F.3d 499, 511-12 (4th Cir. 1999). The computer companies made a conscious decision to forego Rule 11 sanctions and cannot now shoe-horn the relief they seek against Intervenor's under § 1927 into Rule 11's standards. *See, e.g., Hamil v. Mobex Managed Servs. Co.*, 208 F.R.D. 247, 251 (N.D. Ind. 2002); *Northlake Mktg. & Supply, Inc. v. Glaverbel, S.A.*, 194 F.R.D. 633, 636 (N.D. Ill. 2000). *See also* Danielle Kie Hart, *And The Chill Goes On—Federal Civil Rights Plaintiffs Beware: Rule 11 Vis-à-vis 28 U.S.C. § 1927 And The Court's Inherent Power*, 37 Loy. L.A. L. Rev. 645, 659-689 (exploring in detail the phenomenon of "sidestepping," *i.e.*, inappropriate reliance upon § 1927 to punish behavior for which Rule 11 was designed where the moving party failed to warn the party against which sanctions are sought pursuant to Rule 11(c)(1)(A) 21 days in advance of filing the sanctions motion).

⁸ Indeed, Delphi attorney Peter Utterstrom is Lans' next-door neighbor. *See* March 24, 2005, Transcript at 14-15.

Gunnar Berg. *See Schwartz v. Millon Air, Inc.*, 341 F.3d at 1226 ("We cannot say that it was unreasonable—to the point of willful abuse and bad faith—for American counsel to rely upon others (especially other legal counsel) who were fluent in [the foreign language] and familiar with local customs [in the foreign country] and who were on the spot to conduct the investigation.").

4. There was nothing legally suspect about Lans' stated arrangement whereby Uniboard had the right to receive revenue from the '986 patent.

Counsel for Dell implied during his March 25, 2005, cross-examination of Mr. Mastriani that there was something inherently suspect in the arrangement between Lans and Uniboard vis-à-vis the October 19, 1989, I.B.M license and January 2, 1995, Hitachi license. March 25, 2005, Transcript at 230-246. The essence of the newly raised implication by counsel for Dell was that, by not trying to reconstruct two licensing situations that were six years apart, in which they had no participation, and about which their client had a perfectly plausible explanation, Intervenor misapprehended a principle of patent law that only Dell says would have made the arrangement legally impossible. This implication is without merit and certainly insufficient to support the imposition of sanctions under 28 U.S.C. § 1927.⁹

Second, contrary to the suggestions by counsel for Dell, there was nothing legally untenable about Lans' representations of the relationship between himself and Uniboard with regard to the '986 patent or the relationship between the I.B.M. and Hitachi licenses. The holder of an oral transfer of patent rights may, in certain circumstances, sue for infringement in its own name. *See Enzo APA & Son, Inc. v. Geapag A.G.*, 134 F.3d 1090, 1093 (Fed. Cir. 1998). The

⁹ The un rebutted Affidavits of Intervenor's expert, Samuel Miller, found that there was no negligence on the part of Intervenor, and self-serving attorney argument by the computer companies and Lans are unavailing. *See* Intervenor's Opp. to Pls. Mot. for Reconsideration, Exhibit 3 at ¶¶ 13-15; Intervenor's Response to Gateway's Reply, Exhibit 3 ¶¶ 9-12.

existence of an informal arrangement between Lans and his wholly-owned company Uniboard with regard to the '986 patent, thus, was unremarkable. Likewise, elemental principles of agency make it clear that Uniboard and Lans had actual and apparent authority to execute the IBM and Hitachi licenses. Since Lans testified that he and Uniboard are essentially synonymous, Dell's implication that one or the other could contest the validity of the release provisions in the IBM or Hitachi license agreements is practically and legally untenable.

In the course of his cross-examination of Mr. Mastriani, Dell's counsel sought to imply that Mr. Mastriani had a duty to go to Sweden personally and search for documents concerning the ownership of the '986 patent. The Dell argument seems to be that past license agreements and releases from liability for infringement of the '986 patent (and its counterparts) were granted in the name of two separate entities, thus two separate entities must have owned the patent at various times.

In the IBM license, dated October 19, 1989, Uniboard purported to have sufficient interest in the patent to grant retroactive release of liability. In the Hitachi release, dated January 2, 1995, Mr. Lans purported to have sufficient interest in the patent to grant a retroactive release of liability. A patentee may recover damages for a period of six years prior to the initiation of a lawsuit. There was, thus, a slight overlap (ten months) of the periods of release. Dell seeks to make the point that, while Uniboard, as a licensee, may have been in a position to grant a prospective license, it would not have been able to grant a retroactive release. Therefore, prior to bringing suit, counsel should inquire as to the proper ownership, and right to grant releases. This argument overlooks the point that Intervenor *did* inquire as to proper ownership. Intervenor made inquiry of Lans, and Intervenor's Swedish co-counsel conducted a search for documentary evidence. No further inquiry could have reasonably been made.

In the course of seeking to advance Dell's position, certain disagreements as to the scope of licensing law seemed to arise. In the context of discussing section 2.2 of the IBM license, the following colloquy between Dell's counsel and Mr. Mastriani occurred:

Q And did you understand that in order for a party to grant an immunity from suit, such a party needed to be in a position that it could actually bring a suit?

A No. I don't believe that, and I don't believe that's the law.

(Transcript of March 25, 2005, Evidentiary Hearing at 230:13 – 18.) Mr. Mastriani was correct. Contrary to the predicate of Mr. Partridge's question, a licensee, indeed even a nonexclusive licensee, may have the right to sublicense a patent. *See, e.g., Adelberg Laboratories, Inc. v. Miles, Inc.*, 921 F.2d 1267, 1272 (Fed. Cir. 1990) ("[f]urthermore, the change from an exclusive license to a non-exclusive license does not necessarily mean that Abbott no longer had the right to sublicense. *A non-exclusive license can contain the right to sublicense*") (emphasis added). It is well established that a licensee lacks standing to bring suit. *Textile Products, Inc. v. Mead Corp.*, 134 F.3d 1481, 1484 (Fed. Cir. 1998) ("A licensee is not entitled to bring suit in its own name as a patentee, unless the licensee holds, 'all substantial rights' under the patent.") Thus, the predicate for the question that, "in order for a party to grant an immunity from suit, such a party needed to be in a position that it could actually bring a suit," is in error.

Dell's counsel went on to question Mr. Mastriani as follows:

Q Prior to filing the lawsuit against my client, did you take the time to look at the law with respect to whether or not Uniboard had to have some ownership interest of past infringement in order to grant the release in accordance with section 4.1 of this agreement?

(Transcript of March 25, 2005, Evidentiary Hearing at 234:11-16.)¹⁰

As a preliminary matter, Intervenor note the factual invalidity of the premise posited by counsel for Dell that there was any significance to an overlap period between the time Lans could have sued Hitachi for infringement damages and the date of the I.B.M. agreement. The failure by I.B.M. from October 1989 forward to mark its products establishes, as a matter of law, that Lans never could have sued Hitachi for damages prior to the date it was placed on notice, either through marking of a product or actual notice of infringement (*e.g.*, a letter notice of infringement), of the purported infringement. *See* 35 U.S.C. § 287(a). It was I.B.M.'s non-marking of its products with the '986 patent that necessitated Intervenor's sending notices of infringement (which have been admitted as evidence in connection with the instant Motion for Reconsideration) prior to bringing suit on behalf of Lans. Thus, there was never any reason for Intervenor to be concerned that there was a problem with the spacing between the I.B.M. and Hitachi licenses because there was no such problem as a matter of black letter patent law.

Finally, Dell's counsel seems to imply that one must own a patent in order to grant a release of liability for past infringement. This is not necessarily correct. A patent "is, in effect, a bundle of rights which may be divided and assigned, or retained in whole or part." *Vaupel Textilmaschinen KG v. Meccanica Euro Italia SPA*, 944 F.2d 870, 875 (Fed. Cir. 1991). As stated in the *Ethicon* case noted by Dell's counsel, (Hearing Tr. at 231:15), "[a]bsent agreement to the contrary, a co-owner cannot grant a release of another co-owner's right to accrued damages." *Ethicon, Inc. v. United States Surgical Corporation*, 135 F.3d 1456, 1467 (Fed. Cir. 1998) (emphasis added). The caselaw notes numerous examples of patent conveyances containing complex provisions concerning the rights to past damages. *See, e.g., Poly-America*

¹⁰ Mr. Partridge's statement that one must have "some ownership interest of past infringement" is insensate as one may not "own" infringement. We construe this to mean ownership interest in the patent at the time the infringement occurred.

L.P. v. GSE Lining Technology, Inc., 383 F.3d 1303, 1310 (Fed. Cir. 2004) (Where the patentee's nonexclusive licensee and sister company had "the right of enforcement for claims for past damages"); *Vaupel Textilmaschinen KG v. Meccanica Euro Italia SPA* at 875 (where assignor retained the right to receive infringement damages up to certain amount). Accordingly, the arrangement described by Mr. Lans was not aberrational, especially as he testified that he views himself and Uniboard as synonymous.

Dell's efforts to obtain some recovery from Intervenors based on its fallacious legal arguments must be rejected.

IV. CONCLUSION

This Court's ruling that Lans' failure to remember the assignment to Uniboard was not the result of an "honest and understandable mistake" (*Lans v. Gateway, supra*, 84 F. Supp.2d at 120) is as valid today as it was five years ago. Wherefore, Intervenors reiterate their request that this Honorable Court deny plaintiffs' Motion for Reconsideration.

Respectfully submitted,

/s/

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*Attorneys for Intervenors Adduci,
Mastriani & Schaumberg, L.L.P*

EXHIBIT 1

FILE COPYADVOKATFIRMAN
DELPHI & Co**TELEFAX**

Privileged/Confidential information may be contained in this telefax and is intended only for the use of the addressee. You may not use, copy or deliver it to anyone else. If you receive this telefax by mistake, please notify us immediately by telephone.

To:

Adduci, Mastriani & Schaumburg, LLP,
1200 Seventeenth Street, N.W., Fifth Floor,
Washington, D.C. 20036, USA

Attn: Louis S. Mastriani, Esq., Steven E.
Adkins, Esq.

Telefax: 009-1-202-~~467-6300~~ ⁴⁶⁶⁻²⁰⁰⁶

Talbot S. Lindström, Esq.
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Date:

1999-08-17

Number of pages (including this):

11

MESSAGE:

Dear Steve,

Please see attached.


Tal Lindström

AMS 005366

ADVOKATFIRMAN
DELPHI & Co**PRIVILEGED AND CONFIDENTIAL, ATTORNEY WORK PRODUCT**

Steven E. Adkins, Esq.
Adduci, Mastriani & Schauberg, LLP,
1200 Seventeenth Street, NW, Fifth
Floor, Washington, D.C. 20036, USA

Stockholm 17 August, 1999

Re. Håkan Lans

Dear Steve,

Attached are the following:

1. Copies of the Declaration of Håkan Lans, Ratification of Uniboard, both signed by Håkan Lans, Memorialization of his memory of the signing with IBM (unsigned), and a draft of the proposed statement concerning the law by Professor Bogdan. In addition, two other originals of the Declaration and Ratification are being notarized for safety sake and then one notarized original and one that is not notarized will be sent by express service to you.

Please note that the Bogdan draft is not yet finalized and that at least the indicated changes will be made. He has been advised as to the memorialization of HL's memory of the events and that may result in a slight modification to his statement on intent.

With best regards,


Talbot S. Lindström

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document

AMS 005367

Louis S. Mastriani
V. James Adduci, II
Tom M. Schaumberg
Robert A. Westerlund
Raymond H.J. Powell, Jr.
Steven E. Adkins
Adam F. Bobrow
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Counsel for Plaintiff HÅKAN LANS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HÅKAN LANS,

Plaintiff,

v.

GATEWAY 2000, INC.,

Defendant.

Case No. 97CV02523 (JGP/JMF)

DECLARATION OF HÅKAN LANS

(FILED UNDER SEAL PURSUANT TO
JOINT PROTECTIVE ORDER)

I, Håkan Lans, in my individual capacity, declare as follows:

1. I am a citizen and resident of Sweden. My principal place of business and residence is located at Ringvägen 56 E, 133 35 Saltsjöbaden, Sweden. I have personal knowledge of the facts in this Declaration, and they are true. If called upon to do so as a witness, I could and would competently testify with respect to these facts.

2. I am the inventor of the invention covered by United States Letters Patent

No. 4,303,986 (the "Lans patent").

3. I am the sole owner of the Lans patent and believe that I personally have legal title to this patent.

4. The document referred to by Defendant Gateway 2000 in its Motion for Summary Judgment and Memorandum of Points and Authorities in support thereof entitled "Assignment and Declaration" (the "Assignment document") is a document prepared hastily on the date a company which is wholly owned by me, Uniboard Aktiebolag ("Uniboard"), entered into a license agreement with IBM.

5. Inasmuch as the Assignment document was drafted and executed by me quickly approximately nine years ago, and inasmuch as neither I nor Uniboard has possession, custody or control of a copy of such a document, I had not recalled its existence.

6. After seeing the Assignment document again for the first time in over nine years upon Gateway 2000 bringing it to my attention, my memory regarding the creation of this document has been refreshed.


7. As I recall, the Assignment document was prepared solely to effectuate a license agreement between IBM and my company, Uniboard. That agreement is governed, pursuant to Section 11 of that agreement, by German law.

8. Soon after the IBM license and the Assignment document were executed, I came to understand that such an assignment was void and invalid because the patent which was being assigned was the subject of ongoing litigation in Germany.

9. My legal counsel concerning the negotiation and execution of the IBM license agreement and the related Assignment document was Mr. Gunnar Berg. Mr. Berg is now deceased.

10. To my understanding, there was no valid assignment or transfer of legal title to the Lans patent to my wholly owned corporation, Uniboard. It was also my understanding that the IBM license was nonetheless valid because it had been signed

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by me.

11. Inasmuch as I understood the assignment to be void, I never registered any assignment of the patent with the United States Patent and Trademark Office or with any other patent office.

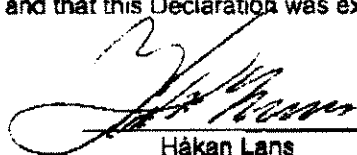
12. In my Initial Disclosure and in verified interrogatory responses, I have consistently stated that no assignment has taken place with respect to the Lans patent.

13. Although there was no transfer of the legal title to the Lans patent, most, if not all of the proceeds recovered under various settlement/license agreements have been collected by Uniboard for my benefit.

14. To the extent that my understanding of the absence of any legal effect of the Assignment document is found to be incorrect, I have prepared, in my capacity as Managing Director of Uniboard, a Ratification under Federal Rule of Civil Procedure 17(a). A copy of this Ratification is annexed hereto and incorporated herein by reference as Exhibit A.

15. The Board of Directors of Uniboard has executed a Corporate Resolution authorizing the referenced Ratification. A copy of this Resolution is annexed hereto and incorporated herein by reference as Exhibit B.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed at Saltsjöbaden, Sweden on August 17, 1999.


Håkan Lans

AMS 005370

EXHIBIT 2

**CONFIDENTIAL –
CONTAINS CONFIDENTIAL
BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

Louis S. Mastriani, Esq.
Tom Schaumberg, Esq.
Steve Adkins, Esq.
Washington

Malmö 18 August, 1999

Re. HL

Some further information and a follow up of the opinion-text.

- a) The opinion – do you have any comments; I will talk to the professor at 3 p.m. Stockholm time to clear any open issues. So please send an email confirming or modifying.
- b) I had a lengthy discussion yesterday with HL concerning the events in 1989; HL confirmed the text you were provided yesterday, and added that his then lawyer took care of all documents relating to the I-agreement (including the declaration). He informed that GB had refused to give the documents to Uniboard's bookkeeper. The documents are still with the estate of the lawyer. The then bookkeeper has confirmed this to me today over the phone. He also confirmed that HL lived under the impression that "it was not possible to transfer the patent to Uniboard during the proceeding" (in Germany)– the bookkeeper said this with a reference to the lawyer in Germany. Finally, the bookkeeper confirmed that per the instructions he was given at the time (both by HL and the Swedish lawyer) "Uniboard was provided with the rights but not the patent" –

Advokatfirman Delphi & Co i Malmö AB

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consequently, the bookkeeper never booked the value of the patent in the accounts but the license fees.

- c) The bookkeeper confirmed that he is willing to sign an affidavit should he be requested – we will draft one asap and have it forwarded to you.
- d) Based on the information I have pulled together I can not conclude otherwise than:
 - 1) The Swedish lawyer had another agenda than his client – I firmly believe that he tried to steal the patent from his client in conjunction with the deal with I-company. This is the only explanation why he accepted a wording which included transfer of the patent – bear in mind that initially a third party company was presented as the recipient of the license fee.
 - 2) Not having the document under control also means that HL had no chance of being reminded of its existence. This is one reason why HL totally overlooked the document and its significance.
 - 3) All indicators we have confirm his comment that he was of the belief that it was not possible to transfer the patent during the German proceeding – so it wasn't effected.

Again, do give me a comment on the opinion text asap.

Best regards

Peter

EXHIBIT 3

FILE COPY

**Subject: Ang: Discovery responses, PRIVILEGED, CONFIDENTIAL, ATTORNEY WORK
PRODUCT, ATTORNEY CLIENT COMMUNICATION, SUBJECT TO
PROTECTIVE ORDER**

Date: Thu, 16 Sep 1999 16:45:56 +0200

From: "Talbot Lindström" <talbot.lindstrom@delphilaw.com>

To: ams@adduci.com

CC: lans@gpc.se, "Peter Utterström" <peter.utterstrom@delphilaw.com>

Dear Steve,

I am sending you now the draft responses to the Interrogatories, which should also serve as the basis for your responses to the document request. I had these prepared on Monday, but have been awaiting Håkan's review of them, which I just received. I am sure you will have some questions when you see these and we need to discuss these. I and Peter will be away until Sunday evening our time. I can be reached at home at 46-8-765-1777 after 9 pm our time (2pm your time). The only documents which Håkan has turned up are the Ericsson transfer documents. In addition, as I noted to you last week, we have the copies of the IBM Agreement, part of the first investor group agreement, and the decision in the arbitration procedure. We also have copies of all of the Uniboard annual reports that are available. As I asked last week, which of these do you want sent? (See attached file: Isv_990913UtkastLansGatewayInterrogatoriesSvar01.doc) As a practical matter, they can not be sent before Monday morning, our time, but that should reach you by Tuesday am your time. In addition, Håkan advises that there may well be documents that are responsive in the files of and under the control of the University of Stockholm as well as in the files and under the control of the Swedish Defense Research Establishment (FOA). In addition, I have not translated any of these documents as of yet because I have no instructions to do so. Please advise me as soon as possible which of them need to be translated.

You should also be aware that Peter has spoken directly with the Director General of the Swedish National Police Board on these issues and that we can provide affidavits (Peter's, mine and his secretary's) as to the that conversation. The bottom line was that he said that the Board was well aware of Håkan Lans, that he could not comment on these secrecy restrictions, but that the matter was under discussion and that we would not be dissatisfied with the measures that had been taken. You need to speak to Peter directly concerning this on his mobile telephone.

"Adduci, Mastriani & Schaumberg, L.L.P." <ams@adduci.com> den 99-09-16 09:05:35

DN=Talbot Lindstrom/O=DELPHI

Till: Talbot Lindström/DELPHI, Peter Utterstrom DELPHI

Kopia:

Ärende: Discovery responses

Dear Tal and Peter:

Would you please check with Mr. Lans to make sure that the responses to the requests for documents and interrogatories from Gateway will be sent to us by no later than tomorrow?

We must have these back so that we can revise them and get them in

AMS 267137

good order for service.

Also, please have Mr. Lans sign the verification pages we have sent to him for Hewlett Packard and for the Gateway interrogatories and send them to us by Federal Express.

Would you please also e-mail the discovery response to me at home at seadkins10@aol.com?

Thank you for your help.

Best regards

SEA

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THIS ELECTRONIC MESSAGE AND ATTACHMENTS, IF ANY, ARE INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY NAMED ABOVE (OR THOSE PROPERLY ENTITLED TO ACCESS THE INFORMATION) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, ATTORNEY-WORK PRODUCT OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS TRANSMISSION IS NOT THE INTENDED OR AN AUTHORIZED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISTRIBUTION, DISSEMINATION, OR COPYING OF THIS TRANSMISSION AND THE ATTACHMENTS, IF ANY, IS PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US COLLECT CALL (202) 467-6300, BY FACSIMILE (202) 466-2006, OR BY ELECTRONIC MAIL ams@adduci.com

Advokatfirman Delphi & Co

 [Isv_990913UtkastLansGatewayInterrogatoriesSvar01.doc](#)

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AMS 267138

**PRIVILEGED AND CONFIDENTIAL, ATTORNEY WORK PRODUCT, ATTORNEY
CLIENT COMMUNICATION, SUBJECT TO PROTECTIVE ORDER**

H. LANS ANSWERS TO GATEWAY 2000 FIRST SET OF INTERROGATORIES

1. Interrogatory No. 1

On several occasions I met with IBM and negotiations with IBM continued for a considerable period of time. IBM's patent department investigated thoroughly the contents of the '986 patent. IBM was also aware that the Japanese enterprise Hitachi was engaged in an invalidity proceeding against the graphic patent in Germany, but this was not discussed in detail. The contacts with IBM were handled by the Swedish attorney, Gunnar Berg, who represented Håkan Lans and his company. When it had been agreed that a contract would be entered into between IBM and Uniboard AB, IBM desired a document which showed that Uniboard had the right to enter into a contract with respect to the '986 patent. IBM's attorneys arranged for a document to be typed out and presented the document to my attorney, Gunnar Berg. Berg read through the document, signed it as a witness and presented it to me for signing. After reading quickly through it, I signed it. IBM took a copy and Berg took care of the original. I have not seen the document since then, except when a copy of it was produced in this litigation by Gateway.

2. Interrogatory No. 2

At my initiative, attorney Gunnar Berg formed a group, in which the Farell Group would be responsible for administration, financing and negotiations in connection with the exploitation of the graphic patent. Besides the Farrell Group, this group was composed of myself, Gunnar Berg and Claes Ekbom. The reason for this was to relieve me from dealing with some of the burdens of managing this patent, since I was by then engaged in another huge international project. Gunnar Berg presented the Farell Group as a very knowledgeable and successful group. The Farell Group had a very large portfolio of real estate properties and when the great real property crises occurred in Sweden, the Farell Group ran into financial problems which resulted in the exploitation of the patent not being properly done. This resulted in me being compelled to continue on by myself through increased efforts in both time and money.

Since the relationship with the Farell Group was terminated, the Investor Group that has had a direct or indirect interest in what happens with respect to the graphic patent has at various times consisted of myself, Uniboard, the Swedish Government through its holding company known as SEKUM (as reported in the Swedish financial publication *Finanstidning* in 1995 or 1996) and GP&C Systems International AB. The relationship of myself and Uniboard to the '986 patent has already been answered in detail in the documents submitted to the Court in connection with the Gateway 2000 motion to dismiss and those are herewith

incorporated by reference as part of this answer. In addition, further documents on that issue are being submitted in response to the Gateway 2000 First Request for Production of Documents and Things.

I, Håkan Lans, am the Managing Director of GP&C Systems International AB and have been so since its founding in 19__ and I am also the sole shareholder in GP&C Systems International AB. GP&C Systems International AB is engaged in the development of non-graphic system related systems. With respect to BP&C Systems International AB, pursuant to the national security restrictions imposed upon me the agencies and instrumentalities of the Government of the Kingdom of Sweden, I am unable to make any other statement or produce any documents with relation to GP&C Systems International AB. In all such questions, I must defer to the Swedish National Police Board.

3. Interrogatory No. 3

I can find no documents in my files relating to this question and therefor can not identify such communications. Many of those documents were kept by Gunnar Berg, who refused me access to them both before and after our relationship was terminated. While I have retained some hard disks from now discarded computers, I have no computer from which these can be read and, in addition, these are security classified by agencies and instrumentalities of the Government of the Kingdom of Sweden and thus I can not, without their permission, release the same. Permission has so far not been granted.

4. Interrogatory No. 4

The real and juridical persons that have or are part of the Investor Group are those named in my response to Interrogatory No. 2 above.

5. Interrogatory No. 5

Since the development of the product was not completed prior to 1979, there were no products to sell. There were however discussions with [Ring and ask Håkan] _____ concerning the possibility of transferring rights to the technology prior to January 9, 1979 and a prototype was shown to the American company Houston Instruments which became interested.

6. Interrogatory No. 6

7. Interrogatory No. 7

8. Interrogatory No. 8

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9. Interrogatory No. 9

10. Interrogatory No. 10

11. Interrogatory No. 11

With respect to Ericcson, there it an agreement dated April 15, 1983 to transfer the patent to me. Furthermore that are 10 transfer documents running from Ericcson to me and dated December 19, 1983. There are also 9 instruction documents from Ericsson to patent authorities to re-register the patent to me. I have not found any documents that I retained with respect to Bausch & Lomb or Houston Instruments. There is an agreement dated February 29, 1980 between Gerber Scientific and me which gives Gerber the exclusive right to a CAD system for circuit boards. In connection with the sale of this system, Gerber is permitted to sell a graphics board based upon the patent.

EXHIBIT 4

Gateway.txt

Från: Peter Utterström/DELPHI [peter.utterstrom@delphilaw.com]
Skickat: den 28 augusti 2001 21:27
Till: Schaumberg@adduci.com; mastriani@adduci.com
Kopia: lans@gpc.se
Ämne: Gateway

Dear Tom and Lou,

I have just received information from HL concerning the Gateway agreement. According to him the definition of "computers" will risk to include STDMA as it will fall into the category "computers or the computer industry". As you know STDMA is the key to the GPS-supported "guidance system" which Håkan has invented and has the patent to. The risk of him being required by Judge Penns ruling to pay - as you indicate - ~~hundreds of thousands of~~ dollars in legal fees is in that context of lesser importance; the potential value of STDMA is simply far greater. I also assume that Håkan's hands are tied under other commitments - he simply can not risk that Gateway or any other third party will also be able to claim that they have acquired a license or any right to other of his patents or inventions. With this in mind it is - at least to me - understandable that he is unwilling to sign the proposed agreement.

I do not know the current status of the arrangement with Gateway - I hope that you will be able to make Gateway understand that they have to focus on the patent and its related areas.

Best regards//Peter

Peter Utterström
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EXHIBIT 5

MEMORANDUM

CONFIDENTIAL DOCUMENT
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE
AND/OR WORK PRODUCT PRIVILEGE

VIA FACSIMILE

TO: Peter Utterström
FROM: Lou Mastriani
DATE: January 29, 1998
RE: Reallocation of Tax Credits

We received your January 28, 1998, memo regarding your discussion with Mr. Lans. You state that the allocation issue "needs some further discussions" and you suggest a telephone conference with Mr. Lans.

There is no need to include Mr. Lans in any conference on this issue because he made his final decision after you spoke to him on Tuesday. I called him on Tuesday night to confirm that he had signed his declaration for the motion to dismiss the Compaq complaint in Texas. He immediately engaged me in a discussion about the allocation of the tax credits and informed me that he had already paid the full amount out of his pocket to his financial backers. He further informed me that these backers receive all revenues from the graphics patents in exchange for supporting all of his research projects. He refused to give me any facts about this relationship and resisted the suggestion of a meeting with these backers and/or their tax advisors. He then gave me the ultimatum that if we "did not solve the allocation problem by returning the 33 percent of the tax withholding amount" to him in the next distribution he would immediately terminate the graphics patent project.

Peter, we are now finding out over a year and a half after we began this project that Mr. Lans has no beneficial ownership in the patent and that he is backed by a nameless company which receives all proceeds from all of his patents. We have also just been informed nine months after the 1997 distributions and one and a half years after the agreement with Mr. Lans that neither he nor his financial backers can supposedly use any of the tax credits, which amount to over \$1.5 million. In exchange for a very large share of the licensing revenues, Delphi's primary continuing responsibility in this project has been to gather all pertinent

information regarding ownership of the graphics patents, the structure of Uniboard and any other company owned by Mr. Lans. Delphi is also responsible for communicating with and controlling the client who apparently is out of control as evidenced by his statement to me that he "really has no interest in the project" and "it does not mean anything" to him because he receives nothing from the licensing revenues.

Needless to say, we are collectively very upset by this situation. Accordingly, please call me tomorrow to discuss this matter, including how Delphi believes this problem should be solved and your views on the future viability of this project. In the meantime, we have prepared the attached calculations taking, as we had offered to, Mr. Lans' views into account for 1998, but not 1997. I would like your suggestion on how to deal with 1997. Also, please respond to the fax requesting confirmation of the bank information.

Best regards.

Attachment