

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HÅKAN LANS,

Plaintiff,

v.

GATEWAY 2000, INC., and DELL
COMPUTER CORP.,

Defendants.

UNIBOARD AKTIEBOLAG,

Plaintiff,

v.

ACER AMERICA CORP., et al.,

Defendants.

)
) Case No. 97-2523 (JGP)

)
) Case No. 97-2526 (JGP)

)
) Case No. 99-3153 (JGP)

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PREHEARING BRIEF OF PLAINTIFFS HÅKAN LANS AND UNIBOARD AKTIEBOLAG

Håkan Lans and Uniboard Aktiebolag submit this prehearing brief in advance of the evidentiary hearing scheduled for March 24, 2005 and in response to the unsolicited March 18, 2005 prehearing brief submitted by Intervenor Adduci, Mastriani & Schaumberg (“AMS”) and Louis Mastriani (“Mastriani”). AMS and Mastriani betrayed their client, violated their ethical obligations and lied to the Court. Now, instead of taking responsibility for their misconduct, they perpetuate it by continuing to blame their former client and heaping abuse on him when all he did was to rely on his lawyers to provide what he had been led to believe would be competent representation in a US legal proceeding.

I. MASTRIANI AND AMS KNEW ABOUT UNIBOARD’S INTEREST IN THE ‘986 PATENT BEFORE FILING THE INFRINGEMENT LAWSUITS

Mastriani and AMS knew about Uniboard’s interest in the ‘986 patent before filing the infringement lawsuits.

A. Lans Told Mastriani about Uniboard in 1996

At the very beginning of the lawyer-client relationship, in 1996, in one of the first meetings between Dr. Lans and Mastriani, Dr. Lans informed Mastriani that he had entered into a license agreement with IBM (“IBM-Uniboard License Agreement”) through his wholly owned company, Uniboard.¹ Dr. Lans also told Mastriani that he had signed documents authorizing Uniboard to enter into the license agreement but that he did not remember the contents of those documents. Dr. Lans told Mastriani that he could find those documents in the files of the lawyer who represented him in the IBM negotiations, Gunnar Berg. Transcript of the Deposition of Håkan Lans (“Lans Tr.”) at 54-56, 81, 89, 95-96 (cited testimony from Dr. Lans is attached as

¹ See Affidavit of Louis S. Mastriani, sworn to May 4, 2004 (Mastriani Ex. 1, Tab 1) at ¶ 13 (attached as Exhibit A); Transcript of the Deposition of Louis S. Mastriani (“Mastriani Tr.”) at 36, 50 (cited testimony from Mastriani is attached as Exhibit B).

Exhibit C). Mastriani has confirmed that he knew about Gunnar Berg because he said he instructed the Swedish law firm, Delphi, to contact Berg's widow.² Mastriani Ex. 1, Tab 1 at ¶ 12; Mastriani Tr. at 46-47.

B. The IBM-Uniboard License Agreement Shows Uniboard's Ownership Interest in the '986 Patent

The IBM-Uniboard License Agreement (Mastriani Ex. 1, Tab 18 [attached as Exhibit F]) states:

7.1 UNIBOARD represents and warrants that it has the full right and power to grant the licenses, immunities and release set forth in Sections 2 and 4, that there are no outstanding agreements, assignments or encumbrances inconsistent with the provisions of said licenses, immunities and release or with any other provision of this Agreement.

The IBM-Uniboard License Agreement further states that "IBM shall pay to UNIBOARD the sum of one million United States dollars (\$1,000,000) promptly after . . . receipt by IBM of satisfactory documentary evidence of UNIBOARD's right to grant the said licenses and immunities." IBM-Uniboard License Agreement, at ¶ 6.1. These sections require documentary evidence that Uniboard had the right to enter into the license with IBM for the '986 patent. AMS knew that such evidence had been sent to IBM because AMS knew that IBM recognized the License Agreement as being valid.

Paragraph 9.2 provides that any further assignments of Uniboard's rights to the '986 patent shall be made subject to the IBM agreement.

² Mastriani evidently forgot that Gunnar Berg did not die until March 1997, so was there was no "widow Berg" in September 1996 when this investigation supposedly took place. See Second Declaration of Håkan Lans, sworn to September 11, 1999, at ¶ 5 (Mastriani Ex. 3) (attached as Exhibit D). A December 19, 1999 e-mail from Delphi's Peter Utterström, attached as Exhibit E, confirms that Delphi did not contact the widow Berg until sometime in late 1999, after Gateway had filed its motion to dismiss.

C. AMS Represented Uniboard in Negotiations with IBM Concerning the Scope of the IBM-Uniboard License Agreement

AMS knew that Uniboard had rights to the '986 patent because AMS was representing Uniboard in negotiations with IBM concerning the scope of those rights. In a series of letters written in early 1997, AMS wrote to IBM "on behalf of Uniboard" discussing the scope of the IBM-Uniboard License Agreement. Mastriani Ex. 1, Tab 27 (attached as Exhibit G); Mastriani Ex. 11 and Ex. 12 (attached as Exhibits H and I).

D. Based Upon the IBM-Uniboard License Agreement, German Correspondent Counsel Concluded that Uniboard Would Be a Proper Plaintiff to Sue on the '986 Patent

On April 9, 1997, AMS contacted German counsel about litigation with respect to the '986 patent in Germany against Cirrus Logic, MiCrus and/or IBM. Mastriani Ex. 13 (attached as Exhibit J). On April 15, 1997, German counsel wrote to AMS commenting upon Uniboard's rights. Mastriani Ex. 14 (attached as Exhibit K). Responding the same day, AMS wrote to German counsel on behalf of "our client" and sent a copy of the IBM-Uniboard License Agreement. Mastriani Ex. 25 (attached as Exhibit L).³ After receiving the agreement, German counsel opined on Uniboard's rights to initiate litigation and based his opinion upon the following "facts," among others: "Uniboard Aktiebolag (hereinafter Uniboard) holds various patents, i.e., US patents 4 303 986 as well as European patent 0023 217, DE 30 360 711." Mastriani Ex. 15 (attached as Exhibit M).

E. Dr. Lans Informed Mastriani in Writing on February 19, 1997 That He Had "Transferred" the '986 Patent to Uniboard

On February 19, 1997, Dr. Lans wrote to Mastriani:

As you know the licenses has been signed with a company
(UNIBOARD AB) and not with me as an individual (the patent has

³ We will continue the numbering used at the Mastriani Deposition, where Ex. 25 was not introduced. We attach Ex. 25 to this brief.

been transferred to the company and for many years ago and the agreement with IBM was made with UNIBOARD AB).

Mastriani Ex. 4 (attached as Exhibit N).

Dr. Lans told Mastriani that in order make this transfer to Uniboard clear, he had signed papers to change the registration for filing with the US Patent Office and that Dr. Lans' Swedish patent attorney, Dr. Bertil Grennberg, would forward the papers to Mastriani.

Mastriani pretends that after receiving this communication, he telephoned Dr. Lans and that Dr. Lans supposedly said, in essence, "I didn't mean it." There is no record to substantiate Mastriani's statement. Mastriani said he telephoned Dr. Grennberg⁴, but Dr. Grennberg has no recollection of any such telephone call. *See* Declaration of Dr. Bertil Grennberg Supporting Motion of Hakan Lans and Uniboard Aktiebolag for Reconsideration of the Court's September 6, 2001 Order Concerning Attorney Fees (attached as Exhibit O).

At the least, Mastriani could and should have clarified the ownership situation before filing suit, either by changing the registration to Uniboard and filing in Uniboard's name, as Dr. Lans says he wanted him to do, or by drafting a quit claim back to Dr. Lans from Uniboard. Mastriani Tr. at 175:6-17; 177:17-23.

F. During the Infringement Litigation, Dr. Lans Asked Mastriani to Reveal Uniboard's Interest in the '986 Patent

On January 28, 1999, Mastriani sent Dr. Lans draft responses to interrogatories from Compaq. AMS had prepared the draft responses and gave their client less than one day to review them.⁵ *See* E-mail from S. Adkins on behalf of L. Mastriani to H. Lans, dated January 28, 1999 (Mastriani Ex. 17) (attached as Exhibit P). Dr. Lans reviewed the draft and suggested that the answer to Interrogatory 10 should be changed from "I am the sole owner of the '986 patent" to

⁴ Mastriani Tr. at 93-97.

⁵ Mastriani Tr. at 158.

“The company Uniboard [sic] AB is the owner of the ‘986 patent rights but the patent is still registrated[sic] in Mr. Håkan Lans name. Consequently Mr. Lans has the sole right to sign license agreements.” E-mail from H. Lans to L. Mastriani, dated January 29, 1999 (Mastriani Ex. 18) (attached as Exhibit Q).

Again, without corroboration, Mastriani pretends that he called Dr. Lans to discuss the email and Dr. Lans said that he didn’t mean it. Mastriani did not incorporate Dr. Lans’ changes.

G. AMS and Mastriani Deceitfully Tried to Prevent Discovery of the IBM-Uniboard License Agreement

In order to keep the original infringement defendants from discovering the IBM-Uniboard License Agreement, AMS and Mastriani misrepresented that the IBM-Uniboard License Agreement was a settlement agreement, and then misrepresented that it was Dr. Lans, not Uniboard, who signed the IBM-Uniboard License Agreement. *See* Proposed Joint Discovery Plan and a Response and Counterproposal to Defendants’ Joint Plan for Discovery, dated December 21, 1998 (Mastriani Ex. 26) at 6; Consolidated Reply of Pl. Håkan Lans to Def. Responses In Opposition To His Counterproposal Regarding a Joint Plan of Discovery filed February 3, 1999 (“Consolidated Reply”)(Mastriani Ex. 27) at 14-15 (attached as Exhibit R). Mastriani submitted the Consolidated Reply, in which he represented that it was Dr. Lans who licensed the patent to IBM, only five days after receiving the January 29, 1999 e-mail from Dr. Lans reminding Mastriani that “[t]he company Uniboard is the owner of the ‘986 patent rights.” *See* Mastriani Ex. 18 and discussion at Section I.F, *supra*.

In fact, AMS and Mastriani never produced the IBM license agreement. The infringement defendants obtained it directly from IBM.⁶

⁶ In its November 23, 1999 Opinion, the Court discussed this conduct, but mistakenly attributed it to Dr. Lans. 84 F. Supp. 2d 112, 114 (D.D.C. 1999).

II. AMS AND MASTRIANI MISLED THE COURT INTO BELIEVING THEY KNEW NOTHING ABOUT UNIBOARD

The Court believed that Dr. Lans had kept Uniboard's existence hidden from AMS. In its November 23, 1999 Opinion, the Court observed, "Lans's original complaint made no mention of Uniboard or any assignment . . . Furthermore, that same interrogatory response indicates that Lans was the party licensing the patent to IBM, when in fact Uniboard was the licensor in the transaction." 84 F. Supp. 2d at 114. "Apparently, even when confronted with defendant's repeated discovery requests surrounding any assignment, Lans neglected to inform even his attorneys that an assignment had taken place. *See* Declaration of Louis S. Mastriani in Support of Emergency Motion for Extension of Time to Respond to Motions by Gateway ("Mastriani Decl.")(dated Aug. 13, 1999) at ¶ 3 ('Inasmuch as I and other counsel to Mr. Lans have been repeatedly informed by Mr. Lans that no assignment had ever taken place with respect to the ['986] patent...')."7

The Court recognized that "the assignment to Uniboard . . . was a vital aspect of [the IBM license] transaction." "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. Therefore, the Court cannot hold that Lans' failure to join or sue in the name of Uniboard was an honest and understandable mistake." 84 F. Supp. 2d at 122.

The Court plainly understood Mastriani's sworn statement (Mastriani Ex. 2) to mean that neither he nor any counsel for Dr. Lans knew about Uniboard or any interest Uniboard might have in the '986 patent. At his deposition, Mastriani testified that he meant something much

⁷ There is no record that Mastriani ever sent the declaration to Dr. Lans for review before AMS filed it. Mastriani Tr. at 24.

more technical and narrow. Mastriani Tr. at 12-16. Later, however, Mastriani acknowledged that “the patent owner can make a decision on its own whether it wants to assign any part or all of the ownership of the patent to whoever it wants.” Mastriani Tr. at 177:4-7.⁸ Even if one could credit Mastriani’s testimony about what he intended to convey, he surely recognized that the Court perceived a different meaning, and he had an obligation to correct the Court’s misperception.⁹

III. AMS AND MASTRIANI MADE THE DECISIONS TO SUE FIRST IN DR. LANS’ NAME AND THEN TO FILE THE UNIBOARD ACTION

Dr. Lans has no culpability for the infringement suits filed by his lawyers, who made the decision to sue in Dr. Lans’ name, and then filed by his lawyers in Uniboard’s name without even telling Dr. Lans after the ‘986 patent had expired.

A. The Lans Lawsuits

The contingent fee agreement between Dr. Lans and two law firms, Delphi and AMS, provided that AMS had the sole and exclusive discretion to decide whether or not to pursue litigation. Mastriani Ex. 1, Tab 9 (attached as Exhibit T); Mastriani Tr. at 77:24-78:2. Mastriani admits that before the infringement suits were filed, he discussed whether the suit should be filed in Dr. Lans’ name or in Uniboard’s name. Mastriani Tr. at 166:24-167:9. There will be disputed

⁸ The IBM license agreement itself talks about partial assignments. Paragraph 9.1 gives IBM the right to assign its license” Uniboard’s right to assign the patent, and restrictions on that right, are covered by ¶ 9.2. Mastriani also wrote to Dr. Lans on March 20, 1996, that he “could assign a partial interest in the patent to an existing company, or one that could be created.” Mastriani Ex. 1, Tab 7 (attached as Exhibit S).

⁹ Mastriani drafted a declaration for Dr. Lans that stated: “Inasmuch as I understood that the assignment was invalid, I subsequently forgot that I had signed the assignment and declaration document.” Dr. Lans will testify: “I have been protesting to this, because I very well remember the existence of the documents, and I also told, we talked about that assignment in February 19, '97, and when I said that it is wrong to say that I have forgot, Mr. Mastriani told me, Can you tell me the content in that assignment? And I said, Well, I have forgot the content. And Mr. Mastriani said, Then you have forgot the agreement. And I said, No, I know the existence. . . But I accepted what Mr. Mastriani told me.” Lans Tr. at 208.

testimony about whether Dr. Lans wanted the suit to be filed in his name or in Uniboard's.¹⁰ The dispute is irrelevant to this motion for reconsideration. Contrary to what Mastriani represented to the Court, he knew about Uniboard, knew that the ownership of the '986 patent was muddled, could easily have clarified the issue and should have done so before suing in Dr. Lans' name. Mastriani Tr. at 214:11-216:25.

B. The Uniboard Action

The Court dismissed the Lans lawsuit on November 23, 1999. AMS filed the Uniboard complaint on November 29, 1999. Mastriani and AMS did not communicate with Dr. Lans between November 23 and November 29, 1999. Mastriani Ex. 1, Tab 41 (second e-mail in chain) (attached as Exhibit U). In fact, AMS did not tell Dr. Lans about the dismissal order until December 3, 1999 and did not send Dr. Lans a copy of the order until December 6, 1999. Mastriani Ex. 1 at Tab 41 (first e-mail in chain). AMS did not ask Dr. Lans to approve the filing of the Uniboard action until December 17, 1999, *after* it had been filed, and not until December 20, 1999 did Dr. Lans give AMS his approval. Mastriani Ex. 1, Tab 40 (attached as Exhibit V).

There is no document explaining to Dr. Lans that the expiration of the '986 patent would make an action by Uniboard to enforce the patent problematic. On the contrary, Dr. Lans asked Mastriani for his assurance that Uniboard could properly bring a lawsuit. Mastriani Ex. 1, Tab 42 (attached as Exhibit W). Dr. Lans testified: "And Mr. Mastriani told me that I must send this because I have created problems for AMS and I were responsible and I had an agreement that

¹⁰ Delphi's Peter Utterström (who was authorized to speak for AMS, Mastriani Tr. at 76:24-77:2) wrote to Dr. Lans that AMS made the decision to sue in Dr. Lans' name. *See* Mastriani Tr. at 190:10-12. Dr. Lans had both personal and tax reasons for suing in Uniboard's name, rather than his own. There is no record that AMS ever sent the complaint to Dr. Lans. Mastriani Tr. at 149-156.

they were entitled to do all decisions. And I must sign the document Mr. Mastriani sent me.”

Lans Tr. at 188-189.

IV. THE IRRELEVANCIES OF THE AMS PREHEARING BRIEF

The AMS prehearing brief is a string of irrelevancies:

- Mastriani’s “offer” to have Dr. Lans testify or to testify himself were made only after the Court had accepted Mastriani’s false statement that he did not know about Uniboard, and were made nearly two years after the case had been dismissed.
- Because Mastriani falsely spoke about privileged communications with his client, Mastriani breached Dr. Lans’ attorney-client privilege. The only truthful thing Mastriani could have said – in camera or out – about his conversations with Dr. Lans would have been to reveal that AMS had known about Uniboard all along and that Mastriani’s statement was false.
- Mastriani Ex. 1, Tab 4, drafted principally by AMS co-counsel Delphi, acknowledges that the issue of whether to sue in Dr. Lans’ name or in Uniboard’s name was a strategic issue on the lawyers’ table before the infringement suits were filed (§ 8.4).
- Mastriani and AMS complain that Dr. Lans, once Mastriani falsely placed attorney confidences in the public record, should not be allowed to set the record straight or to communicate with others about the case.
- Mastriani complains that the Swedish government is concerned that one of its leading citizens has been misused.

V. CONCLUSION

Mastriani had the facts needed to represent Dr. Lans and Uniboard competently. As Utterström wrote to Mastriani on August 8, 1997, several months before AMS filed the infringement lawsuits: “The starting point is the fact that HL did ask us – the two firms – to represent him/Uniboard in the collection of license fees from the infringers . . .” Mastriani knew about Uniboard before the lawsuit was filed. Utterström knew about Uniboard before the lawsuit was filed. Lans did not “conceal” the assignment from his attorneys.

It does not matter who the Court believes as to whether Dr. Lans wanted to sue in his own name or in Uniboard’s name. The lawyers had the facts, and knew enough about the ambiguities of the situation, to be able to clarify them so the case would not be dismissed on a technicality.

What makes this case appalling is not the overwhelming evidence of attorney incompetence, but the clear evidence of attorney deceit. On August 13, 1999, Dr. Lans’ and Uniboard’s then counsel, Louis Mastriani, declared under penalty of perjury:

Inasmuch as I and other counsel to Mr. Lans have been repeatedly informed by Mr. Lans that no assignment had ever taken place with respect to the Lans patent, we are investigating the circumstances surrounding the referenced Assignment.

If this statement was intended to have the plain meaning the Court ascribed to it, it is a lie. If one pretends that the statement was intended to have the hyper-technical meaning Mastriani gives it

in his deposition (Mastriani Tr. at 12-16), it became a lie when the Court understood the statement in its plain meaning, and Mastriani refused to correct the Court's misperception.

Dated: March 22, 2005

/s/

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CERTIFICATE OF SERVICE

I certify that on March 22, 2005, I filed the foregoing Prehearing Brief of Plaintiffs Håkan Lans and Uniboard Aktiebolag using the CM/ECF system which sent notice of such filing to the following:

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