

# United States Court of Federal Claims

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CHAMBERS OF  
JUDGE SUSAN G. BRADEN  
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## MEMORANDUM

November 8, 2016

TO: Chief Judge Patricia E. Campbell-Smith  
Ms. Sarah Wilson, Esq., Covington & Burling  
Members of the Advisory Council

FROM: Judge Susan G. Braden 

CC: Judge Nancy B. Firestone  
Ms. Meredith Miller  
Ms. Sara Cope  
Ms. Angelica Austin

SUBJECT: Report of the United States Court of Federal Claims Advisory Council,  
Intellectual Property Committee For November 15, 2016 Meeting

The following are members of the Committee:

Mark Abate, Goodwin Procter

John Fargo, United States Department of Justice

Joshua Kresh, Fried Frank

Professor Peter Menell, Berkeley Center of Law & Technology

Professor Lateef Mtima, Howard University School of Law

Michael Saywer, Covington & Burling

James Schaefer, Skadden, Arps, Slate, Meagher & Flom, Palo Alto, California

Andy Schwentker, Fish & Richardson

Two new members have been added to the Committee: Mark Abate and Joshua Kresh replace Eric Jescke, who is now a Judge at the USPTO and Stefani Vande Lune, who resigned from Kirkland & Ellis, joined the Navy, and began Medical School at the University of Indiana. Both will be missed; but, as alumni, we take pride in their continuing interest in and past contributions to the United States Court of Federal Claims.

**Mark Abate- NYC Goodwin Proctor Partner**

Mark Abate has been consistently recognized as one of the nation’s foremost IP lawyers. *U.S. News-Best Lawyer* recognized Mr. Abate as its New York City patent litigation “Lawyer of the Year” for 2015. *Chambers USA* refers to Mr. Abate as “a true gentleman and a fantastic trial lawyer” and “an accomplished and respected patent litigator” and notes he “is respected by judges,” “sought after for his lengthy experience before the ITC” and has a “winning combination of legal and technical expertise.” *IAM Patent Litigation 1000 – The World’s Leading Patent Professionals* refers to Mr. Abate as “a most sought-after trial lawyer,” “deeply professional,” “tactically smart” and notes “he consistently secures favorable results.”

Mr. Abate concentrates his practice on trials and appeals of patent infringement cases, and has particular expertise in matters involving electronics, computers, software, financial systems and electrical, mechanical and medical devices. He has tried cases to successful conclusions in U.S. district courts and the U.S. International Trade Commission and has argued appeals before the U.S. Court of Appeals for the Federal Circuit. He is a past-President of both the New York Intellectual Property Law Association and the New Jersey Intellectual Property Law Association and is a board member of the Federal Circuit Historical Society. He served as a law clerk for Chief Judge Howard T. Markey of the Federal Circuit.

**Josh Kresh- DC Office Fried Frank Associate**

Josh Kresh is a litigation association in Fried Frank's Washington, D.C. Office and his practice focuses on patent litigation in the U.S. District Courts, the International Trade Commission, the U.S. Patent and Trademark Office and the U.S. Court of Appeals for the Federal Circuit. In 2015, he was a key member of the trial team that achieved a victory on behalf of WebMD Health Corp., in a patent infringement suit in the Central District of California concerning the online storage of medical records. Last year he also worked on obtaining a judgment on the pleadings in a patent case in the Northern District of Illinois on behalf of Daimler AAG and Mercedes-Benz USA concerning methods of detecting driver impairment. In addition, Mr. Kresh has substantial experience with *inter partes* review proceedings and has worked on petitions challenging the validity of patents concerning light-emitting panel displays, pattern recognition systems, telematics units, crash avoidance systems, hybrid engines, adaptive cruise control systems and tail lights.

Mr. Kresh received a BA in Computer Science from Brandeis University in 2003, a MBA in Computer Science from Brandeis University in 2005, and a JD from the George Washington School of Law in 2013. He served as a Judicial Intern for the United States Court of Federal Claims and received the Giles S. Rich American Inn of Court Award in 2012-2013. He is an Officer of that Inn, Vice Chair of a Committee of the AILPA, and a member of the Federal Circuit Bar Association. Mr. Kresh is admitted to practice in the New York and District of Columbia Bars, the United States Patent and Trademark Office

the United States Court of Federal Claims and the United States Court of Appeals for the Federal Circuit.

In addition, we are sad that John Fargo has decided to retire from the Department of Justice after a very distinguished career in service to the public and intellectual property law, but he has agreed to continue to serve on the IP Committee, as an Emeritus. Effective January 1, 2017, Gary Hausken will serve as our representative from the Department of Justice.

\* \* \*

The IP Committee has accomplished the following tasks since our April 26, 2016 Report:

1. Professor Peter S. Menell completed the **Third Edition of the Patent Case Management Judicial Guide** that includes a new Chapter 13 entitled: “Patent Suits Against the Government.” John Fargo from the Department of Justice and Michael Sawyer from Covington & Burling are acknowledged as collaborators (Tab A). Judge Braden was acknowledged as a member of the 10 member Judicial Advisory Board (Tab B). Professor Menell has graciously provided a copy to each member of the court’s Advisory committee, for which we are most appreciative.
2. A third draft of proposed patent rules was circulated to the IP Committee and we are submitting the 11/15/16 draft to the full Advisory Committee (Tab C), with a request that it now be transmitted to the Rules Committee of the United States Court of Federal Claims for their further review and edit. We hope that a revised version will be available at the May meeting, so that the court may then decide to publish a final draft for public comment.
3. With the help of Meredith Miller, Angelica Austin, and John Fargo, we are providing the entire Advisory Committee with a list of patent decisions issued by the United States Court of Federal Claims from October 1, 2004 through September 30, 2016, with subsequent history citations (Tab D). In addition, the IP docket is provided for this same period, listing separately copyright, *pro se* patent cases, and patent cases where the plaintiff is represented by counsel, together with the case status and amount of any settlement (Tab E).
4. Other outreach:
  - In September 2016, Judge Braden was tapped to serve on the 25<sup>th</sup> Anniversary Celebration of the Giles S. Rich Inn of American Court. This event will be marked by a dinner at the United States Supreme Court on May 13, 2017 with a video tribute to Circuit Judge Rich from members of the Federal Circuit, private bar, and former Rich law clerks. The dinner speaker will be Graham Moore, the author of the new best-selling book, *The Last Days of Night*, which tracks the historical dispute over the light bulb patent between George Westinghouse, represented by young Paul Cravath, and Alexander Graham Bell. Mr. Moore recently won the Academy Award for his first screenplay, “The Imitation Game,” and currently is in London working on the screenplay for “The Last Days of Night,” that will star the Academy Award winning actor, Eddie Redmayne, as Cravath (Tab F).

- On November 9–11, 2016, Judge Braden will participate in a working session to review Chapter 1–2 Preliminary Draft No. 2 (Oct. 14, 2016) of the American Law Institute’s *Restatement of the Law of Copyright*. Judge Braden is one of nine judicial advisors, including Circuit Judge Timothy B. Dyk of the United States Court of Appeals for the Federal Circuit (Tab G).
- On November 17, 2016, Judge Braden will moderate a panel at the Federalist Society Annual Meeting, “*Courts v. Congress: What Is A Patentable Invention?*” The panelists include David Kappos, Cravath Swaine & Moore and former Under Secretary of Commerce and the Director of the United States Patent and Trademark Office; Mark Perry, Gibson Dunn & Crutcher; Professor Adam Mossoff, Antonin Scalia Law School (formerly George Mason University School of Law); and Professor Joshua D. Sarnoff, DePaul University College of Law.
- On February 16, 2017, Judge Braden will moderate a panel at the Giles S. Rich Inn of Court on the current patent docket of the United States Supreme Court. The panelists include: Paul D. Clement, Kirkland & Ellis; Carter Phillips, Sidley & Austin; and Kannon Shanmugam, Williams & Connolly.
- March 10, 2017 – Judge Braden will be speaking at the Project on the Foundations of Private Law hosted by Harvard Law School and The George Washington University Law School on “Intellectual Property, Private Law, and the Supreme Court.”
- On April 6, 2017 – Judge Braden will co-host a panel with William Covey, Office of General Counsel USPTO on “Ethics,” Spring Meeting of Intellectual Property Law Section of the American Bar Association.

Tab A

# Patent Case Management Judicial Guide

*Third Edition*

Peter S. Menell  
*Koret Professor of Law  
Berkeley Center for Law & Technology  
University of California, Berkeley School of Law*

Lynn H. Pasahow  
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Federal Judicial Center 2016

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to develop educational materials for the judicial branch. While the Center regards the content as responsible and valuable, it does not reflect policy or recommendations of the Board of the Federal Judicial Center.

Tab B

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*Northern District of California*  
*Director, Federal Judicial Center*

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*District Judge*  
*Southern District of California*

Hon. Susan G. Braden  
*Judge*  
*Court of Federal Claims*

Hon. James Rodney Gilstrap  
*District Judge*  
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*Circuit Judge*  
*Court of Appeals for the Federal Circuit*

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*Chief Judge*  
*District of New Jersey*

Hon. Leonard P. Stark  
*Chief Judge*  
*District of Delaware*

Hon. Ronald M. Whyte  
*Senior District Judge*  
*Northern District of California*

Tab C



**United States Court of Federal Claims  
Patent Rules**

**DRAFT**

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**PREAMBLE**

The Rules for Patent Cases filed in the United States Court of Federal Claims, under 28 U.S.C. § 1498(a) supplement the existing rules of the court, by providing the minimum amount of structure necessary to facilitate a fair, but expeditious resolution of patent cases. The complexity of an individual case, however, may require the presiding judge to make necessary adjustments as the interest of justice requires.

## **1. SCOPE OF RULES**

### **1.1. Title and Application.**

The Rules for Patent Cases filed in the United States Court of Federal Claims (“the court”) are cited as “PRCFC \_\_\_.”

The PRCFC apply to all civil actions instituted under 28 U.S.C. § 1498(a) and supplement the Rules of the United States Court of Federal Claims (“RCFC”).

### **1.2. Modification.**

The court may modify the requirements or deadlines set forth in the PRCFC, based on the complexity of the case, upon a showing of good cause.

## **2. PRELIMINARY PROCEEDINGS**

### **2.1. Preliminary Disclosure Of Infringement Contentions.**

Within sixty (60) days after a Complaint is filed, or as otherwise ordered by the court, plaintiff(s) alleging patent infringement will serve on defendant(s) (“the Government”) and any intervenor-defendant(s), a Preliminary Disclosure Of Infringement Contentions, that includes the following information for each patent that is allegedly infringed:

- a. the claim in each product, process, or method that allegedly infringes the identified claim. This identification will be specific and include the name and model number, if known, of the accused product, process, or method;
- b. a chart identifying where each limitation of each asserted claim is found within each accused product, process, or method, including the name and model number, if known;
- c. whether each limitation of each identified claim is alleged to be literally present or present under the doctrine of equivalents in the accused product, process, or method;
- d. for each patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled and whether the patentee is relying on the filing date or an earlier conception date, as the priority date;
- e. whether each patent at issue has been, or is likely to be, subject to re-examination proceedings;

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- f. whether other litigation and/or *inter partes* proceedings are ongoing or anticipated and whether one or more parties will seek a stay, consolidation, coordination, or transfer.

**2.2. Document Production To Accompany Preliminary Disclosure Of Infringement Contentions.**

Together with the Preliminary Disclosure Of Infringement Contentions, the plaintiff(s) will produce to the Government and any intervenor-defendant(s) or readily make available for inspection and copying:

- a. all documents that evidence any disclosure, sale, or transfer, or offer to disclose, sell, or transfer the claimed invention, prior to the date of application for each patents issue;
- b. all documents that evidence the conception and first reduction to practice of each claimed invention that was created on or before the date of application or the priority date identified;
- c. the file history with the United States Patent and Trademark Office for each patent at issue; and
- d. all documents that evidence ownership of the patent by the plaintiff(s).

Nothing in these preliminary disclosures will be considered an admission as to prior art or evidence of prior art, pursuant to 35 U.S.C. §§ 102–103.

**2.3. Preliminary Disclosure Of Invalidity Contentions.**

Within sixty (60) days after receiving the Preliminary Disclosure Of Infringement Contentions And Documents, or as otherwise ordered by the court, the Government and/or intervenor-defendant(s) will serve on plaintiff(s) a Preliminary Disclosure Of Invalidity Contentions, together with the following information:

- a. the identity of each item or combination of items of prior art that allegedly anticipates each asserted claim or renders that claim obvious. Each prior art references will be identified by number, country of origin, and date of issue. Each prior art publication will be identified by title, date of publication, and, where feasible, author and publisher. Prior art that evidences public use or sale will also specify the item publicly used or offered for sale, the date the use or offer took place, and identity of the persons or entities that made the use or sale, or offer, and/or received an offer. The prior art reference will include a description of where, in each alleged item of prior art, each limitation of each asserted claim is found;
- b. an explanation of how each item of prior art, or combination thereof, anticipates each asserted claim and/or renders it obvious; and

- c. the identity and explanation of any other basis for invalidity, or unenforceability of any of the asserted claims.

Because disclosures under this section are preliminary, the court will allow clarifications, amendments, or corrections upon a showing of good cause.

**2.4. Document Production To Accompany Preliminary Disclosure Of Invalidity Contentions.**

Together with the Preliminary Disclosure Of Invalidity Contentions, the Government and/or intervenor-defendant(s) will produce to plaintiff(s) or make available for inspection and copying:

- a. documents that evidence the operation of any aspects or elements of the accused product, process, or method identified by the plaintiff(s) as allegedly infringing; and
- b. a copy of any additional items of prior art identified that do not appear in the file history of the patent(s) at issue.

**2.5. Response To Preliminary Disclosure Of Invalidity Contentions.**

Within thirty (30) days after service of the Preliminary Disclosure Of Invalidity Contentions, plaintiff(s) may file and serve on the Government and any intervenor-defendant(s), a Response. Thereafter, the court promptly will proceed to adjudicate invalidity contentions before claim construction, unless the Government intervenor-defendant(s) request otherwise

**2.6. Preliminary Scheduling Conference.**

When the parties confer, pursuant to RCFC Appendix A, in addition to the matters listed therein, they will discuss and address in the Joint Preliminary Status Report, the following topics:

- a. any proposed modification of the obligations or deadlines herein and the effect on the Claim Construction Hearing;
- b. any proposed modification to the Protective Order, set forth herein at Appendix A;
- c. the scope and timing of any claim construction discovery, including the disclosure of and discovery from any expert witness;
- d. the format of the Claim Construction Hearing, including whether the court will hear live testimony and the order of presentation; and
- e. whether and in what manner the parties are prepared, if requested, to inform the court about the relevant technology.

### **3. CLAIM CONSTRUCTION**

#### **3.1. List Of Proposed Claim Terms For Construction.**

Within forty-five (45) days after service of the Preliminary Response To Disclosure Of Invalidity Contentions, each party will serve on all other parties a list of claim terms for each patent that the court is requested to construe.

No more than fifteen (15) terms per patent may be requested for construction, unless a showing of good cause is made and granted by the court. For each claim term to be construed, the parties will state whether it is outcome-determinative.

#### **3.2. Exchange Of Proposed Claim Terms For Construction.**

Within forty-five (45) days after receipt of the List Of Proposed Claim Terms For Construction, each party will serve on all other parties, a proposed construction for each claim term to be construed. Each party's proposed construction will identify all intrinsic and extrinsic evidence that supports the proposed construction.

Within seven (7) days after the Exchange Of Proposed Claim Terms For Construction, all parties will meet and confer in an attempt to further narrow the number of claim terms.

#### **3.3. Joint Claim Construction Chart.**

Within fifteen (15) days after the Exchange Of Proposed Claim Terms For Constructions, the parties will file a Joint Claim Construction Chart that includes:

- a. the claim terms and construction on which the parties agree; and
- b. each party's proposed construction of each disputed claim term, together with identification of intrinsic and extrinsic evidence on which the proposing party intends to rely.

#### **3.4. Joint Claim Construction Appendix And Prehearing Statement.**

At the time the Joint Claim Construction Chart is filed, the parties also will file:

- a. a Joint Appendix listing the patent(s) at issue and the prosecution history for each. The prosecution history must be paginated be cited as the Joint Appendix ("JA") when referenced. Any party also may file a separate appendix, containing other supporting materials;
- b. each party's proposed definition of a Person Of Ordinary Skill In The Art, or a joint definition of the Person Of Ordinary Skill In The Art, if the parties agree;
- c. a proposed schedule for the Claim Construction Hearing;

- d. whether any party proposes to call one or more witnesses at the Claim Construction Hearing, together with the identity of the witness and short summary of the anticipated testimony; and
- e. whether any party intends to request a hearing on invalidity or indefiniteness.

### **3.5. Claim Construction Status Conference.**

Within seven (7) days after filing the Joint Claim Construction Chart and Prehearing Statement, the court will schedule a status conference to set the date for the Claim Construction Hearing, within 90 days thereafter, and discuss any other relevant matters with the parties.

### **3.6. Pre-Claim Construction Hearing Briefs.**

Pre-Claim Construction Hearing Briefs are optional and any party may elect instead to rely on the Joint Claim Construction Chart.

### **3.7. Post-Claim Construction Hearing Briefs.**

The parties will file Post-Claim Construction Hearing Briefs according to the following schedule:

- a. within sixty (60) days after the court convenes a Claim Construction Hearing, the plaintiff(s) will file and serve a Post-Claim Construction Brief.
- b. within thirty (30) days after plaintiff(s) files and serves a Post-Claim Construction Brief, all opposing parties will file and serve Responsive Post-Claim Construction Brief(s).
- c. within fifteen (15) days after the filing of Responsive Post-Claim Brief(s), the plaintiff(s) may file and serve a Reply Post-Claim Construction Brief.

## **4. SETTLEMENT**

### **4.1. Mandatory Settlement Discussions.**

The parties will meet and confer, in person or by telephone:

- a. within seven (7) days after entry of the court's Claim Construction Opinion and Order;
- b. within seven (7) days after entry of the court's Validity or Indefiniteness Opinion and Order, if the case is not dismissed; and
- c. within seven (7) days after completion of the trial.

**4.2. Joint Statement Of Compliance With Mandatory Settlement Discussions.**

Within five (5) days after each settlement discussion, the parties will file with the court:

- a. a joint statement of compliance with PRCFC 4.1, indicating that the settlement discussion was conducted and apprising the court of the outcome; or
- b. a proposed order requesting that the case be dismissed.

**5. OTHER**

**5.1. Stay Of Proceedings.**

Upon motion, the court may stay the case, pending a proceeding before the United States Patent and Trademark Office that concerns the patent at issue *e.g.* reexamination, *inter partes* review, or any other post-grant review proceeding. Whether the court stays a case will depend on the circumstances of each particular case, including: (1) the stage of the litigation; (2) whether a stay will simplify the issues; and (3) whether a stay unduly will prejudice or present a clear tactical disadvantage to the nonmoving party.

**5.2. Confidentiality.**

The Protective Order, attached as Appendix A, governs the production of any documents or information disclosed.

**5.3. Good Faith Participation.**

Failure to make a good faith effort to comply with the PRCFC may subject counsel to sanctions.

**5.4. Certification of Disclosures.**

All disclosures made, pursuant to the PRCFC, must be dated and signed by counsel of record (or by the party, if not represented by counsel) and are subject to the requirements of RCFC 26(g).

**5.5. Admissibility of Disclosures.**

Statements, disclosures, or charts are admissible to the extent permitted by the Federal Rules of Evidence.

**5.6. Supplementation Requirements.**

The requirement to supplement disclosure and discovery responses under RCFC 26 will apply to all disclosures required by the PRCFC.

**5.7. Amendments.**

The duty to amend or supplement does not excuse the need to obtain leave of court.

A party may amend the Disclosure Of Infringement Contentions or the Disclosure Of Invalidity Contentions only by court order, upon a showing of good cause.

**Appendix A**

# In the United States Court of Federal Claims

No. \_\_\_\_\_

Filed: [Date]

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 \_\_\_\_\_,  
 \*  
 Plaintiff,  
 \*  
 v. \*  
 \*  
 THE UNITED STATES, \*  
 \*  
 Defendant \*  
 \*  
 \*  
 \*\*\*\*\*

## PROTECTIVE ORDER

The court enters the following Protective Order, pursuant to Federal Rule of Civil Procedure 26(c)(1).

This Protective Order does not specify the procedures under which access to National Security Information is to be provided and shall not be construed as requiring the production of any information that is classified for reasons of national security. Access to such information will be governed solely by existing laws and regulations.

**IT IS HEREBY ORDERED** that the following provisions will govern the conduct of further proceedings in this action:

1. As used in this Protective Order, these terms have the following meanings:
  - (a) Attorneys: counsel of record;
  - (b) Documents: all materials within the scope of RCFC 34;

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- (c) “Restricted—Attorneys’ Eyes Only” documents: the subset of Restricted documents that are designated pursuant to Paragraph 5;
- (d) Written Assurance: an executed document in the form found in LPR Appendix B;
- (e) Litigation support contractors: contractors who are subject to an obligation, either by contract or trade practice, to maintain the confidentiality of any material received in performance of services related to this litigation and rendered for the attorneys of record in this litigation (by way of example and not limitation, “litigation support contractors” include copying services, court reporters, videographers, document storage and management contractors, database management contractors, and information technology and network support contractors);
- (f) Experts: outside persons who are used by a party or its attorneys to furnish technical or expert services, and/or to give expert testimony in this litigation; and
- (g) Third Party: Any party not directly involved in this litigation.

2. By identifying a document as “Restricted,” a party may designate any document, including interrogatory response, other discovery response, and/or transcript that it, in good faith, contends constitutes or contains trade secret, proprietary, source selection sensitive, or other similar confidential information that the owner thereof has taken reasonable measures to protect from disclosure to the public or competitors. In the case of the United States, other information and documents that may be identified as “Restricted” will include:

- (a) Documents categorized as “FOR OFFICIAL USE ONLY (FOUO),” including unclassified information in the possession or under the control of the Department of Defense; and
- (b) Trade secret, proprietary, source-selection sensitive, or other confidential information belonging to non-parties, but within the control or custody of the United States.

3. All “Restricted” documents, along with the information contained in the documents, will be used solely for the purpose of this litigation and no person receiving such documents will, directly or indirectly, transfer, disclose, or communicate in any way the contents of the documents to any person, other than those

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specified in Paragraph 4. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of other intellectual property rights.

4. Without a court order, access to any Restricted document will be limited to:

- (a) the court and its personnel;
- (b) attorneys of record in the above-captioned litigation, to the extent they have agreed to be bound by this Protective Order, and any members or employees of their respective law firms or, in the case of the United States, the attorneys, legal assistants, and legal support staffs of the Department of Justice and any agency or department of the United States involved in this litigation;
- (c) persons shown on the face of the document to have authored or received it;
- (d) litigation support contractors;
- (e) inside counsel of the parties, subject to the conditions of Paragraph 8;
- (f) a party's officers and employees directly involved in this litigation, whose access to the information is reasonably required to supervise, manage, or participate in this litigation, subject to the conditions of Paragraph 8;
- (g) experts, subject to the conditions of Paragraph 8; and
- (h) any other person or entity that the parties (including third parties, to the extent the third party has designated the document as "Restricted") mutually agree, in writing, may have access to "Restricted" documents.

5. The parties will have the right to further designate Restricted documents or portions of Restricted documents as "Restricted—Attorneys' Eyes Only." Without a further court order, disclosure of such information shall be limited to the persons designated in Paragraphs 4(a), (b), (c), (d), (g) and, in addition, persons designated in Paragraph 4(h), to the extent the parties mutually agree in writing that an individual may have access to "Restricted—Attorneys' Eyes Only" documents.

6. Notwithstanding any other provision of this Protective Order, no information designated "Restricted—Attorneys' Eyes Only" will be disclosed under this Protective Order to any individual involved in the prosecution of patent applications related to the subject matter of the claimed invention

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involved in this litigation. Individuals to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order, however, may provide copies of material prior art or other non-confidential information to counsel involved in prosecution to be provided to the United States Patent and Trademark Office. Unless otherwise agreed upon by the parties, no individual to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order will be involved in the prosecution of patent applications related to the subject matter of the claimed invention involved in this litigation until one (1) year after the final disposition of this action, including all related appeals (the “Prosecution Bar”). The parties expressly agree that the Prosecution Bar set forth herein will be personal to any attorney who reviews information designated “Restricted—Attorneys’ Eyes Only” and will not be imputed to any other persons or attorneys at the attorney’s law firm or company, unless information concerning that designated information was communicated to an individual by one who reviewed such designated information. For purposes of the Prosecution Bar, “prosecution” includes: (i) the drafting or amending of patent claims, or the supervising of the drafting or amending of patent claims; (ii) participating in or advising on any reexamination, reissue, *inter partes* review, or other post-grant review proceeding, except as specified below; and (iii) advising any client concerning strategies for obtaining or preserving patent rights related to the subject matter of the claimed invention involved in this litigation before the United States Patent and Trademark Office or other similar foreign government or agency. “Prosecution” does not include participating in or advising on any reexamination, reissue, *inter partes* review, or other post-grant review proceeding by a party’s lawyers, with respect to any patents in which an opposing party involved in this litigation has any interest or any patent involved in the pending action. Nothing contained herein will preclude lawyers having access to documents designated as “Restricted—Attorneys’ Eyes Only” from having discussions with their clients about the general status of the case and about settlement offers, so long as during any discussions the lawyers do not impart any “Restricted—Attorneys’ Eyes Only” information to their clients.

7. Third parties producing documents in the course of this litigation also may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” subject to the same protections and constraints as the

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parties to the litigation. A copy of this Protective Order will be served together with any subpoena served in this litigation. All documents produced by such third parties, even if not designated by the third parties as “Restricted” or “Restricted—Attorneys’ Eyes Only,” will be treated by the parties to this action as “Restricted—Attorneys’ Eyes Only” for a period of fifteen (15) days from the date of production. During that fifteen day period, any party may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” pursuant to the terms of this Protective Order.

8. Each person who is to receive “Restricted” information, pursuant to Paragraphs 4(e), (f), or (g), will execute a “Written Assurance” in the form found in the PRCFC Appendix B. Opposing counsel will be notified in writing at least ten (10) days prior to disclosure of “Restricted” information to any such person. Such notice will provide a reasonable description of the person to whom disclosure is sought sufficient to permit an objection to be made. Upon good cause (which does not include challenging the qualifications of such outside person), a party may object in writing to disclosure within ten (10) days after receipt of notice by setting forth in detail the grounds on which the party’s objection is based. If a party objects, within the ten-day period, no disclosure will be made until the party seeking disclosure obtains the prior approval of the court or the objecting party.

9. All depositions or portions of depositions taken in this litigation that contain information that may be designated “Restricted” or “Restricted—Attorneys’ Eyes Only,” according to Paragraphs 2 and 5, may themselves be so designated and thereby obtain the protections accorded other “Restricted” or “Restricted—Attorneys’ Eyes Only” documents. Designations for depositions will be made either on the record or by written notice to the other party, within 10 days of receipt of the final transcript. Unless otherwise agreed depositions shall be treated as “Restricted—Attorneys’ Eyes Only” until ten (10) days after receipt of the final transcript. The deposition of any witness (or any portion of such deposition) that includes “Restricted” information will be taken only in the presence of persons qualified to have access to such information.

10. Any party who fails to designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” may designate the documents after production, to the same extent as it may have designated the documents before production, by providing written notice of the error and substituting copies of the documents bearing

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appropriate designations. The party receiving the designation will, upon receiving the replacement set of documents, immediately return or destroy the documents that lacked the designation to the designating party, and the parties will undertake reasonable efforts to correct any disclosure of such information, contrary to the designation. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

11. In addition to the requirements imposed by Federal Rule of Evidence 502 and RCFC 26(b)(5)(B), any party who inadvertently discloses documents that are privileged or otherwise immune from discovery will, promptly upon discovery of the error, advise the receiving party in writing and request that the documents be returned. The receiving party will return or certify destruction of the documents, including all copies, within ten (10) days of receiving such a written request. The party returning or destroying such documents may thereafter seek reproduction of any such documents, pursuant to applicable law, although the party seeking reproduction may not use the fact that the documents were previously produced inadvertently to argue that privilege or any other immunity from discovery has been waived. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

12. If a party intends to file a document containing “Restricted” information with the court, this Protective Order grants leave to make such filing under seal. Prior to disclosure at trial or a hearing of materials or information “Restricted” or “Restricted—Attorneys’ Eyes Only,” the parties may seek further protections against public disclosure from the court.

13. Any party may request a change in the designation of any information designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Any such document will be treated as designated until such request is approved by the court. If the disclosing party does not agree to the requested change in designation, the party seeking the change may move the court for appropriate relief, providing notice to any third party whose designation of produced documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” in the litigation may be affected. The party asserting that the material is Restricted will have the burden of proving

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that the information in question is within the scope of protection afforded by this Protective Order and RCFC 26(c).

14. Not later than sixty (60) days after the termination this litigation, including all related appeals, each party will either destroy or return to the disclosing party all documents designated by the disclosing party as “Restricted” or “Restricted—Attorneys’ Eyes Only,” and all copies of such documents, and will destroy all extracts and/or data taken from such documents. Each party will provide a certification in writing to the disclosing party as to such return or destruction within the sixty-day period. Attorneys will be entitled to retain, however, one set of all documents filed with the Court, obtained during discovery, or generated as correspondence in connection with the action, including one copy of documents designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Nothing in this order will require deletion of data from tapes or other storage maintained solely for the purpose of permitting the rebuilding or recovery of files, provided that access to this data is restricted to those otherwise permitted access under this Protective Order.

15. Any party may move the Court for a modification of this Protective Order, and nothing in this Protective Order will be construed to prevent a party from seeking such further provisions enhancing or limiting access to documents as may be appropriate.

16. The obligations imposed by this Protective Order will survive the termination of this litigation and all related appeals and will remain in effect until the party designating the documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” agrees otherwise in writing or a further court order otherwise directs.

17. Not later than sixty (60) days after the termination of this litigation, including all related appeals, the parties will file a motion with the Court seeking leave to remove any physical materials designated “Restricted” or “Restricted—Attorneys’ Eyes Only” from the office of the Clerk of Court.

18. Nothing in this Protective Order will be construed to prevent any party from disclosing its own Restricted information in any manner that it considers appropriate.

19. In the event that any party seeks the production of documents containing material that may be classified, subject to International Traffic in Arms Regulations or other export controls, or otherwise restricted by federal law, the parties will confer regarding an appropriate resolution consistent with federal

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law. Notwithstanding anything contained in this Protective Order, National Security Information will be controlled according to applicable statute.

20. The court reserves the right, after reviewing the record and other information submitted by the parties, to modify this Protective Order, or the parties' designation of materials or proceedings as "Restricted" or "Restricted—Attorneys' Eyes Only," in the event such materials or proceedings are not properly classified as confidential, privileged, proprietary, competition-sensitive, or otherwise protectable.

**IT IS SO ORDERED.**

*/s/* \_\_\_\_\_  
**[Name of Judge]**  
**Judge**

**Appendix B**

**WRITTEN ASSURANCE**

I, \_\_\_\_\_, declare that:

1. My address is \_\_\_\_\_, and the address of my present employer is \_\_\_\_\_.
2. My present occupation or job description is \_\_\_\_\_.
3. My present relationship to plaintiff/defendant(s) is \_\_\_\_\_.
4. I have received a copy of the Stipulated Protective Order (the “Protective Order”) in this action.
5. I have carefully read and understand the provisions of the Protective Order, agree to be bound by it, and specifically agree I will not use or disclose to anyone any of the contents of any Restricted information received under the protection of the Protective Order.
6. I understand that I am to retain all copies of any of the materials that I receive which have been so designated as Restricted in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned or legal duties. I will destroy or return to counsel all Restricted documents and things that come into my possession. I acknowledge that such return or the subsequent destruction of such materials will not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

I declare under penalty of perjury under the laws of the state where executed that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the State of \_\_\_\_\_.

\_\_\_\_\_  
Signature

**Tab D**

## Court of Federal Claims Patent Cases Resolved by Written Opinion

(10/01/2004-09/30/2016)

*Haddad v. United States*, No. 15-1139C, 2016 WL 5660268 (Fed. Cl. Sept. 30, 2016)

*American Innotek, Inc. v. United States*, No. 11-223C, 2016 WL 5266660 (Fed. Cl. Sept. 22, 2016)

*Demodulation, Inc. v. United States*, 126 Fed. Cl. 499 (2016), *appeal dismissed*, No. 16-2147 (Fed. Cir. Sept. 27, 2016)

*Floyd v. United States*, 125 Fed. Cl. 183 (2016)

*Cormack v. United States*, 122 Fed. Cl. 691 (2015)

*Thales Visionix, Inc. v. United States*, 122 Fed. Cl. 245 (2015), *appeal docketed*, No. 15-5150 (Fed. Cir. Sept. 16, 2015)

*Gal-Or v. United States*, 121 Fed. Cl. 33, *aff'd*, 621 F. App'x 665 (Fed. Cir. 2015)

*Sheridan v. United States*, 120 Fed. Cl. 127, *aff'd*, 629 F. App'x 948 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 2411 (2016)

*Liberty Ammunition, Inc. v. United States*, 119 Fed. Cl. 368 (2014), *aff'd in part, vacated in part, rev'd in part*, 835 F.3d 1388 (Fed. Cir. 2016)

*Lucree v. United States*, 117 Fed. Cl. 750 (2014), *aff'd*, 596 F. App'x 922 (Fed. Cir. 2015), *cert. denied*, 135 S. Ct. 2871 (2015)

*Lamson v. United States*, 117 Fed. Cl. 755 (2014), *appeal dismissed*, No. 14-5001 (Fed. Cir. Jan. 29, 2015)

*Zoltek Corporation v. United States*, No. 96-166C, 2014 WL 1279152 (Fed. Cl. Mar. 31, 2014), *rev'd*, 815 F. 3d 1302 (Fed. Cir. 2016)

*NeuroGrafix v. United States*, 111 Fed. Cl. 501 (2013)

*Unitrac, LLC v. United States*, 113 Fed. Cl. 156 (2013), *aff'd*, 589 F. App'x 990 (Fed. Cir. 2015)

*Linick v. United States*, 104 Fed. Cl. 319 (2012), *aff'd*, 515 F. App'x 892 (Fed. Cir. 2013)

*USHIP Intellectual Properties, LLC v. United States*, 98 Fed. Cl. 396, *on reconsideration in part*, 102 Fed. Cl. 326 (2011), *and aff'd*, 714 F.3d 1311 (Fed. Cir. 2013), *and aff'd*, 714 F.3d 1311 (Fed. Cir. 2013)

*Martin v. United States*, 99 Fed. Cl. 627 (2011)

*Chinsammy v. United States*, 95 Fed. Cl. 21 (2010), *aff'd*, 417 F. App'x 950 (Fed. Cir. 2011)

*TDM America, LLC v. United States*, 92 Fed. Cl. 761 (2010), *aff'd*, 471 F. App'x 903 (Fed. Cir. 2012)

*Stroughter v. United States*, 89 Fed. Cl. 755 (2009), *appeal dismissed*, No. 10-5095, 2010 WL 1687894 (Fed. Cir. Apr. 26, 2010)

*Sparton Corp. v. United States*, 89 Fed. Cl. 196 (2009), *appeal dismissed*, 395 Fed. App'x 689 (Fed. Cir. Sept. 10, 2010)

*The Boeing Co. v. United States*, 86 Fed. Cl. 303, *remanded pursuant to settlement agreement*, 374 F. App'x 955 (Fed. Cir. 2009)

*Hyde v. United States*, 85 Fed. Cl. 354 (2008), *aff'd*, 336 F. App'x 996 (Fed. Cir. 2009)

*Honeywell Int'l Inc. v. United States*, 81 Fed. Cl. 224 (2008), *rev'd and remanded*, 596 F.3d 800 (Fed. Cir. 2010), *superseded*, 609 F.3d 1292 (Fed. Cir. 2010), *and reh'g granted, opinion withdrawn*, 377 F. App'x 14 (Fed. Cir. 2010), *and rev'd*, 609 F.3d 1292 (Fed. Cir. 2010), *cert. denied sub nom. L-3 Communications Corp. et al. v. Honeywell Int'l Inc., et al.*, 131 S. Ct. 3021 (2011)

*Honeywell Int'l Inc. v. United States*, 81 Fed. Cl. 514 (2008), *rev'd and remanded*, 596 F.3d 800 (Fed. Cir. 2010), *superseded*, 609 F.3d 1292 (Fed. Cir. 2010), *and reh'g granted, opinion withdrawn*, 377 F. App'x 14 (Fed. Cir. 2010), *and rev'd*, 609 F.3d 1292 (Fed. Cir. 2010), *cert. denied sub nom. L-3 Communications Corp. et al. v. Honeywell Int'l Inc., et al.*, 131 S. Ct. 3021 (2011)

*Pilley v. United States*, 74 Fed. Cl. 489 (2006), *appeal dismissed*, 213 Fed. App'x 981 (Fed. Cir. Dec. 22, 2006)

*Honeywell Int'l, Inc. v. United States*, 70 Fed. Cl. 424 (2006), *rev'd and remanded*, 596 F.3d 800 (Fed. Cir. 2010), *superseded*, 609 F.3d 1292 (Fed. Cir. 2010), *and reh'g granted, opinion withdrawn*, 377 F. App'x 14 (Fed. Cir. 2010), *and rev'd*, 609 F.3d 1292 (Fed. Cir. 2010), *cert. denied sub nom. L-3 Communications Corp. et al. v. Honeywell Int'l Inc., et al.*, 131 S. Ct. 3021 (2011)

Tab E

IP Cases and Judgments/Settlements - October 1, 2004 - September 30, 2016

Date Filed	Case Number	Copyright Cases Case Name	Judgment	Notes
5/26/2006	1:06-cv-00427-CEL	D'ABRERA	\$120,000	Both are the same case. One was filed in SDNY and transferred
6/11/2007	1:07-cv-00365-CEL	D'ABRERA	\$0	Settled
7/25/2006	1:06-cv-00539-TCW	GAYLORD	\$684,845	Judgment after trial. Aff'd on appeal.
1/31/2007	1:07-cv-00078-NBF	RUBIN	\$2,700	Settled - July 2007.
3/9/2007	1:07-cv-00154-ECH	COHEN	\$750	Judgment. However, offset by award of \$426 in costs to govt. - Judgment not collected.
10/8/2008	1:08-cv-00717-LAS	QUINTAL	\$35,000	Settled. April 2010.
4/30/2010	1:10-cv-00269-EID	PEARSE-HOCKER	\$40,000	Settled. Aug. 2011. Other terms in settlement agreement.
6/24/2010	1:10-cv-00393-FMA	AVIATION SOFTWARE	\$0	Dismissed December 2011 - issue and claim preclusion from district court litigation
7/8/2011	1:11-cv-00449-JFM	KOFAX, INC	\$1,000,000	Release and perpetual license for software
2/3/2012	1:12-cv-00080-TCW	APPTRICITY CORPORATION	\$50,000,000	Settled. Case involved breach of software license/copyright infringement.
11/27/2013	1:13-cv-00942-EGB	DAVIDSON		Case is ongoing
8/25/2015	1:15-cv-00945-EGB	4PD HOLDINGS LLC		Case is ongoing.
5/1/2014	1:14-cv-00374-FMA	MICRO/SYS, INC.	\$45,000	Settled.
7/15/2016	1:16-cv-00840-EID	BITMANAGEMENT		Case is ongoing
6/30/2016	1:16-cv-00783-MBH	BRUHN NEW TECH		Case is ongoing. Refiling of earlier case 1:16-cv-00092-MBH
10/27/2016	1:16-cv-01421-MCW	EFFICIENT ENTERPRISE ENG.		Case is ongoing
		Total (16)	\$51,928,295	
		<b>Pro Se Copyright Cases</b>		
8/24/2005	1:05-cv-00926-EGB	SILER	\$0	Dismissed. Multiple cases dismissed 12(b)(1)/12(b)(6)
2/21/2008	1:08-cv-00099-NBF	SILER	\$0	Dismissed. Multiple cases dismissed 12(b)(1)/12(b)(6)
3/17/2009	1:09-cv-00167-FMA	SILER	\$0	Dismissed. Multiple cases dismissed 12(b)(1)/12(b)(6)
3/1/2010	1:10-cv-00134-FMA	SILER	\$0	Dismissed. Multiple cases dismissed 12(b)(1)/12(b)(6)
12/4/2006	1:06-cv-00822-EGB	THOMAS	\$0	Dismissed. Dec 2006
10/15/2008	1:08-cv-00734-LB	RICE, GREGORY	\$0	Dismissed. March 2009
11/13/2009	1:09-cv-00783-RHH	RICHARDSON	\$0	Dismissed. March 2010. (Rice and Gregory possible strawman cases)
6/4/2010	1:10-cv-00346-LIB	POTTER	\$0	Dismissed. Nov 2010. CAFC affirmed Sep 2011
5/7/2013	1:13-cv-00323-MBH	DRIESEN	\$0	Dismissed. Apr 2014 - 12(b)(1)/12(b)(6)
5/28/2013	1:13-cv-00360-FMA	WILEY	\$0	Dismissed sua sponte - Jun 7 2013
7/18/2013	1:13-cv-00490-VJW	CLARK	\$0	Dismissed.
10/28/2013	1:13-cv-00844-MMS	ROBERSON	\$0	Dismissed. Mar 2014. Appeal pending
1/30/2014	1:14-cv-00085-LIB	WILLIAMS	\$0	Dismissed. Apr 2014 - 12(b)(1)/12(b)(6)
5/12/2014	1:14-cv-00409-LB	WILLIAMS	\$0	Dismissed.
7/21/2014	1:14-cv-00633-MBH	NORTON	\$0	Dismissed
7/23/2014	1:14-cv-00644-MBH	MATTHEWS	\$0	Dismissed (Sovereign Citizen strawman case)
5/19/2014	1:14-cv-00459-JFM	POTTER	\$0	Dismissal aff'd by Fed Cir
3/20/2014	1:14-cv-00218-LB	ANDERSON	\$0	Dismissed April 2014, CAFC aff'd Sep 2014
9/1/2016	1:16-cv-010194-EID	AMOS		Case is ongoing
		Total (19)	\$0	

		Pro Se Patent Cases		
5/21/2010	1:10-cv-00310-MBH	CHINSAMMY	\$0	Dismissed Dec 2010, CAFC aff'd Apr 2011 (provisional patent app.)
12/26/2012	1:12-cv-00910-CFL	GHARB	\$0	Dismissed Aug 2013.
12/26/2012	1:12-cv-00911-VJW	GHARB	\$0	Dismissed Sep 2013.
12/26/2012	1:12-cv-00913-MMS	GHARB	\$0	Dismissed Sep 2013.
2/1/2013	1:13-cv-00089-VJW	GHARB	\$0	Dismissed Dec 2013.
2/5/2013	1:13-cv-00100-NBF	GHARB	\$0	Dismissed Jun 2013.
1/14/2013	1:13-cv-00029-ECH	MICHELOTTI	\$0	Dismissed Aug 2013. Dismissal aff'd Feb 2014.
8/4/2014	1:14-cv-00696-MCW	SHERIDAN	\$0	Case dismissed
3/18/2005	1:05-cv-00382-EID	PILELY	\$0	\$1 for govt. Nov. 2006
11/14/2006	1:06-cv-00771-ECH	MITCHELL	\$50,000	Settled - paid up license
7/11/2007	1:07-cv-00523-LMB	ROSS	\$0	Case seeking revival of patent application transferred to D. Fla.
1/15/2008	1:08-cv-00027-TCW	HYDE	\$0	Dismissed Dec 2008, CAFC aff'd Jul 2009
9/24/2008	1:08-cv-00670-PEC	YUFA	\$0	Case dismissed after patent held not infringed in action against supplier
6/24/2009	1:09-cv-00413-CCM	SMITH	\$0	Dismissed Oct 2009
6/21/2010	1:10-cv-00384-LJB	HORNBACK	\$0	Dismissed Dec 2010, CAFC aff'd Apr 2012
5/19/2011	1:11-cv-00318-FMA	MCGRATH	\$0	Case dismissed after patent claims held invalid in inter partes re-exam
5/1/2013	1:13-cv-00307-SGB	GOLDEN	\$0	Case is ongoing
9/7/2011	1:11-cv-00572-MCW	THOMAS	\$0	Dismissed Feb 2012
10/6/2015	1:15-cv-01139-NBF	HADDAD	\$0	Case dismissed lack of jurisdiction. Consolidated. Case assigned to SGB
10/6/2015	1:15-cv-01140-NBF	HADDAD	\$0	Case dismissed lack of jurisdiction. Consolidated. Case assigned to SGB
3/9/2012	1:12-cv-00165-NBF	HADDAD	\$0	Dismissed Jun 2012 w/o prejudice - section 1500
2/24/2014	1:14-cv-00147-MCW	BONDYOPADHYAY	\$0	Case is ongoing
11/19/2015	1:15-cv-01399-MBH	SACCHETTI	\$0	Case is ongoing
3/21/2016	1:16-cv-00358-NBF	ARUNACHALAM	\$0	Case is ongoing
8/17/2015	1:15-cv-884-CFL	MANNING	\$0	Dismissed as frivolous Oct. 2, 2015
		Total (25)	\$50,000	
		Patent Cases		
11/8/2004	1:04-cv-01661-EJD	KOLLMORGEN CORPORATION	\$0	Vol. Dismissal w prejudice in light of settlement with suppliers
12/23/2004	1:04-cv-01815-ECH	LOCK NEST, L.L.C.	\$4,000,000	Settled Payment for past, plus license agreement with Army for future
2/3/2005	1:05-cv-00187-JFM	RICE, IVAN	\$1,225,000	Settled with ADR mediation
10/11/2005	1:05-cv-01075-TCW	SEVENSON ENVIRONMENTAL	\$193,500	Settled. Add'l payment by contractor - \$236,500
11/17/2005	1:05-cv-01209-LMB	JENNINGS TRANSMISSION	\$325,000	Settled. Add'l payment of \$50,000 each from two suppliers
5/8/2006	1:06-cv-00375-MBH	WEIBLER	\$55,000	Settled with ADR mediation. Lump sum paid-up license
6/21/2006	1:06-cv-00472-TCW	TDW AMERICA, LLC	\$0	\$1 for defendant Aug 2011 (denial of Rule 60), aff'd CAFC 2012
8/23/2006	1:06-cv-00601-EJD	WHITNEY	\$571,375	Settled. Add'l \$191,125 from supplier
12/12/2006	1:06-cv-00845-MMS	STENA REDERI AB	\$3,200,000	Settled. Full release.
11/29/2006	1:06-cv-00801-MCW	IRIS CORPORATION BERHAD	\$0	Voluntary dismissal w prejudice, settled with suppliers
6/18/2007	1:07-cv-00396-ECH	ROMANO	\$80,000	Settled. Sep 2008.
7/19/2007	1:07-cv-00543-EJD	MAXIT DESIGNS, INC.	\$0	Voluntary dismissal w prejudice Jul 2008
9/6/2007	1:07-cv-00652-LMB	VAN WINKLE	\$10,250,000	Settled with ADR mediation. Lump sum paid-up license
1/31/2008	1:08-cv-00069-LSM	AVOCENT REDMOND CORP	\$50,000	Settled with trial judge mediation. Global settlement reached between Avocent and supplier
2/1/2008	1:08-cv-00071-EJD	L-3 SERVICES, INC.	\$0	Vol. Dismissal w/o prejudice while private infringement action against supplier proceeded

7/23/2008	1:08-cv-00537-SGB	USHIP INTELLECTUAL PROP	\$0	SI for defendant Mar 2012, aff'd CAFC 2013	
9/2/2009	1:09-cv-00579-MCW	CONNELL	\$150,000	Settled with Fed Cir ADR. Suppliers also paid total of \$2,100,000 and running royalty license to suppliers	
10/13/2009	1:09-cv-00688-SGB	IBIS TEK, LLC	\$625,000	Settled. Fully paid up license	
1/4/2010	1:10-cv-00003-CCM	LEIGHTON TECHNOLOGIES, LLC	\$425,000	Settled. Fully paid up license	
8/11/2010	1:10-cv-00540-PEC	CANVS CORPORATION	\$14,000,000	settled after mediation. Fully paid up license	
9/22/2010	1:10-cv-00635-TCW	LINICK	\$0	Judgment for government after trial Apr 2012, aff'd CAFC 2013 - Secrecy Act	
11/8/2010	1:10-cv-00769-EGB	SPA SVSPATRONIC AG	\$402,678	Settled, with third party defendants paying an additional \$1,347,322 with full release and paid-up license	
1/20/2011	1:11-cv-00052-EGB	ADVANCED SOFTWARE DESIGN	\$0	Voluntary dismissal w/ prejudice. Settlement with supplier	
2/8/2011	1:11-cv-00084-CFL	LIBERTY AMMUNITION, LLC	\$0	Fed Cir reversed judgment. En banc petition pending	
2/28/2011	1:11-cv-00130-JFM	RETURN MAIL, INC		Case is ongoing. PTAB invalidity holding on appeal to Fed Cir	
4/1/2011	1:11-cv-00201-MCW	ROSS-HIME DESIGNS, INC.		Case is ongoing	
4/8/2011	1:11-cv-00223-MCW	AMERICAN INNOTEK, INC	\$0	Patent claims held invalid by CFC. Appeal time has not run.	
4/14/2011	1:11-cv-00236-TCW	DEMODULATION, INC	\$0	Dismissed. Appeal dismissed.	
4/22/2011	1:11-cv-00255-FMA	CHEETAH OMNI, LLC	\$0	Voluntary dismissal w/ prejudice after IPR invalidating claims in suit	
5/2/2011	1:11-cv-00268-EGB	SECURITYPOINT HOLDINGS, INC.		Case is ongoing.	
6/10/2011	1:11-cv-00377-NBF	JAMSON	\$0	SI for government July 2014; aff'd on appeal	
9/9/2011	1:11-cv-00581-EID	UNITRAC, LLC	\$0	SI for government October 2013; aff'd by Fed Cir	
9/26/2011	1:11-cv-00616-CFL	SMITH	\$2,000,000	Settled with release and paid-up license	
11/22/2011	1:11-cv-00784-FMA	ARRIVALSTAR S.A.	\$0	Voluntary dismissal prior to Markman hearing	
2/8/2012	1:12-cv-00085-SGB	ADVANCED AEROSPACE TECH		Case is ongoing	
3/9/2012	1:12-cv-00163-EGB	HITTRANSUT LLC		Dismissed w/o prejudice and retried	
5/10/2012	1:12-cv-00303-CFL	HITTRANSUT LLC		Case is ongoing	
4/3/2012	1:12-cv-00216-MCW	UUSI, LLC		Case is ongoing	
6/15/2012	1:12-cv-00385-EID	NEUROGRAFX, NEUROGRAPHY	\$0	Dismissed w/o prejudice. Failure to join co-owner	
8/1/2012	1:12-cv-00484-CFL	FASTSHIP, LLC		Litigation ongoing	
8/6/2012	1:02-cv-19091-SGB	HONEYWELL INTERNATIONAL	\$75,000,000	Case is offshoot of 02-1909 - settled after CAFC liability decision and CFC damages decision	
12/11/2012	1:12-cv-00867-EGB	DECISION DYNAMICS, INC	\$0	Dismissed and re-filed	
1/23/2013	1:13-cv-00057-EDK	ENSGN-BICKFORD	\$0	Voluntarily dismissed w/o prejudice subject to stated conditions	
5/20/2013	1:13-cv-00340-SGB	KEPNER	\$0	Re-file of Decision Dynamics dismissed w/ prejudice	
4/3/2013	1:13-cv-00232-CFL	CAMERON LANNING CORMACK	\$0	SI Non-infringement	
4/5/2013	1:13-cv-00242-NBF	NEXTEC APPLICATIONS,	\$0	Stip. Dismissed with prejudice	
6/25/2013	1:13-cv-00419-EID	BLUE SPIKE, LLC	\$0	Dismissed after settlements with suppliers	
8/13/2013	1:13-cv-00575-SGB	AAR MANUFACTURING	\$2,000,000	Settled - release and paid-up license	
8/19/2013	1:13-cv-00588-TCW	ACCASVEK, LLC	\$2,100,000	Settled. Paid up license/covenant not to sue	
11/8/2013	1:13-cv-00890-NBF	DISASTER WARNING NETWORK	\$ 67,000	Settled. Additional \$33,000 paid by supplier. Release and fully paid-up license.	
2/5/2014	1:14-cv-00103-CFL	MORPHO DETECTION	\$0	Voluntary Dismissal w/ prejudice July 2014 - settlement w/ supplier	
3/26/2014	1:14-cv-00232-MCW	MYKEY TECHNOLOGY	\$0	Voluntary dismissal after district court settlements	
4/11/2014	1:14-cv-00284-EID	HOLMBERG		Case is ongoing	
5/27/2014	1:14-cv-00451-MBH	TRITEK TECHNOLOGIES	\$0	Settled. Payment by contractor. Release to govt.	
6/16/2014	1:14-cv-00513-TCW	THALES VISIONIX INC	\$0	Case is ongoing. On appeal to Fed Cir	
6/23/2014	1:14-cv-00532-PEC	JERICO SYSTEMS CORPORATION	\$0	Voluntary dismissal w/ prejudice after district court decision invalidating claims in suit	
1/16/2015	1:15-cv-00044-MMS	ALLADIN TEMP-RITE	\$0	Dismissed after settlements with supplier	
1/27/2015	1:15-cv-00083-EDK	RUEHL		Case is ongoing. Stayed while district court case against supplier proceeds.	
2/10/2015	1:15-cv-00133-MCW	GLASSEY	\$0	Voluntarily dismissed after adverse 9th Cir decision on ownership	

5/15/2015	1:15-cv-00501-CFL	3RD EYE SURVEILLANCE	Case is ongoing
8/14/2015	1:15-cv-00747-VJW	JULIET MARINE SYSTEMS	Case is ongoing. Secrecy Act case.
2/3/2016	1:16-cv-00161-EGB	ENHANCED SYSTEMS & PROD	Case is ongoing
2/24/2015	1:15-cv-00175-EGB	IRIS CORPORATION BERHAD	Case is ongoing. Stayed during IPR in USPTO
11/3/2015	1:15-cv-01307-VJW	CELLCAST	Case is ongoing
12/15/2015	1:15-cv-01549-PEC	U OF SOUTH FLORIDA	Case is ongoing
2/16/2016	1:16-cv-00227-EGB	MORPHO TRUST & L-1	Case is ongoing
3/16/2016	1:16-cv-00346-LKG	GEO-SPATIAL TECHNOLOGIES	Case is ongoing
8/1/2016	1:16-cv-00909-MBH	BEACON ADHESIVES	Case is ongoing
		Total (68)	\$116,719,553

Tab F

**BREAKING NEWS**

Yahoo says huge security breach exposed account information for at least 500 million users

## THE WALL STREET JOURNAL.

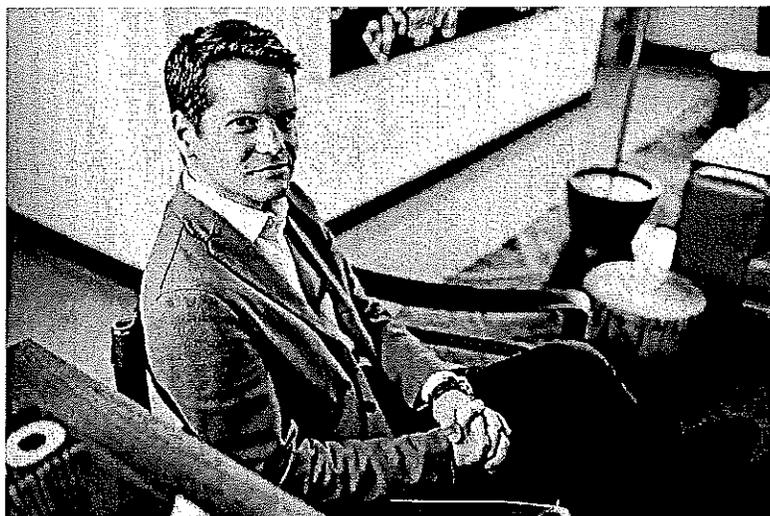
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<http://www.wsj.com/articles/thriller-follows-rival-engineers-thomas-edison-and-george-westinghouse-1470927837>

ARTS | BOOKS

# Thriller Follows Rival Engineers Thomas Edison and George Westinghouse

In 'The Last Days of Night,' writer Graham Moore tracks the rivalry between Thomas Edison and George Westinghouse through the eyes of a litigator



Graham Moore *PHOTO: SHAYAN ASGHARNIA FOR THE WALL STREET JOURNAL*

By **LUCY FELDMAN**

Aug. 11, 2016 11:03 a.m. ET

In the late 1880s, Thomas Edison and George Westinghouse were embroiled in a historic legal battle over the right to produce a billion-dollar technology: the lightbulb. Edison accused Westinghouse, his rival in American electrification, of infringing on his lightbulb patent. To handle his defense, Westinghouse made a

surprising choice: Paul Cravath, then an untested 26-year-old Columbia Law School grad.

That history sets the scene for “The Last Days of Night,” Graham Moore’s second novel, which will be published Aug. 16. Mr. Moore, who is 34 years old, spent six years researching and writing his fast-paced tale about the litigation between the turn-of-the-century inventors and their race to develop technologies.

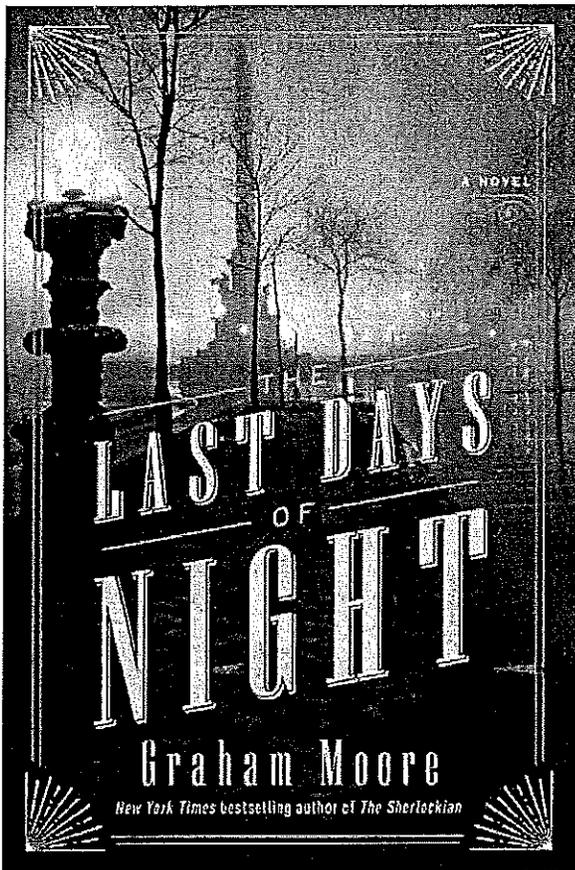
More: Read an excerpt from “The Last Days of Night.”

Mr. Moore follows Cravath, his protagonist, as he crosses paths with figures such as Alexander Graham Bell, J.P. Morgan, opera singer Agnes Huntington and Serbian-born inventor Nikola Tesla, who alternately rivaled and collaborated with both Edison and Westinghouse.

The author has built a career recounting familiar tales from history through unexplored perspectives. “This seems to be a mode of storytelling I’ve been drawn to in my life, taking subject matter that at first blush seems like it should be painfully dry,” he says. “The trick is to see the story from the eyes of its characters.”

His first novel, the 2010 best seller “The Sherlockian,” involved a missing diary belonging to Sir Arthur Conan Doyle and examined a death among Holmes diehards. In 2015, Mr. Moore won the Academy Award for Best Adapted Screenplay for “The Imitation Game,” based on a biography of mathematician and World War II code-breaker Alan Turing. The film’s director, Morten Tyldum, will turn “The Last Days of Night” into a movie starring Eddie Redmayne as Cravath. Shooting starts in January, a couple of months behind another on the subject, “The Current War,” with Benedict Cumberbatch—who played Turing—as Edison.

Cravath was Mr. Moore’s entree into a true story rife with legal and scientific details. With the lawyer as his protagonist, Mr. Moore could filter the science underlying the legal dispute through a character who has to absorb the technicalities as the reader does. When Westinghouse explains the difference between direct and alternating current, Cravath gets bored around the same time that the reader wants to move on.



Listen to an excerpt from 'The Last Days of Night'

00:00

07:34

Penguin Random House Audio

The 357-page novel has 72 short chapters that often end on cliffhangers. “Paul was in the midst of unimaginable skulduggery,” Mr. Moore says. “Edison and Westinghouse had spies in each other’s operations. They were trying to damage each other’s factories. He would have felt himself to be inside a thriller.” At the time, Edison was known publicly as “the Wizard of Menlo Park,” for the area in New Jersey that was home to his laboratory.

Though the book reads like a legal thriller, the author relies only occasionally on courtroom scenes. “You can imagine a version of it where there’s a lot of ‘Objection!’” said Noah Eaker, executive editor at Random House, which bought the manuscript for seven figures. “Instead we have fires and disappearances.”

Edison outwits Cravath and Westinghouse with legal and PR maneuvers at every turn, all the while holding tight to his electricity empire. But the author doesn’t take sides. “Edison, Westinghouse, Tesla—in their rivalry, their great conflict, there is no villain. They’re all sort of right, even though they all disagree so fundamentally,” he says. “At the end something wonderful is produced, and it’s something wonderful that none of them could have done alone.”

Edison kept diaries throughout his life, which Mr. Moore consulted in fleshing out his character. He read biographies and autobiographies of his three primary inventors, histories of American electrification, news clippings, obituaries, scientific journals from the period and Edison’s original patent. He consulted with patent-law professors and electrical scientists and visited the law firm where Cravath practiced. Founded in 1819, the firm added Cravath’s name in 1901 and today is known as Cravath, Swaine & Moore LLP.

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**MORE IN BOOKS**

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- A Veteran Editor on His Life's Work Sept. 13, 2016
- Roald Dahl Writes Home Sept. 7, 2016

The author met with a Cravath partner, who revealed that the firm has a box of letters between Cravath and

Westinghouse, but Mr. Moore's pleas to read them were unsuccessful. Attorney-client privilege holds even though both parties are long dead, according to the partner. "He was very clear with me that under no circumstances could I see these letters," Mr. Moore says. "I'm hoping at some point now that the book is coming out that I can trick him into leaving me alone in a room with this box for a few minutes."

**Write to** Lucy Feldman at [Lucy.Feldman@wsj.com](mailto:Lucy.Feldman@wsj.com)

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Tab G

**Restatement of the Law  
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