

Exhibit A

Robinson, Kellie N. (HQ-NB000)

From: McConnell, Stephen (HQ-NB000)
Sent: Monday, June 30, 2008 8:13 AM
To: Robinson, Kellie N. (HQ-NB000)
Subject: Fw: FOIA Request

Attachments: jm_nasa.pdf



jm_nasa.pdf (106 KB)

----- Original Message -----

From: Jed Margolin <jm@jmargolin.com>
To: nasafoia@nasa.gov <nasafoia@nasa.gov>
Sent: Sat Jun 28 21:05:56 2008
Subject: FOIA Request

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

I would like all documents related to the Administrative Claim of Jed Margolin for Infringement of U.S. Patent Nos. 5,566,073 and 5,904,724; NASA Case No. I-222.

I am attaching a letter dated June 11, 2003 from Alan Kennedy, Director, Infringement Division, Office of the Associate General Counsel as file jm_nasa.pdf. I provided the information requested, it was received by Mr. Kennedy, and thereafter Mr. Kennedy refused to respond to my attempts to find out the results of the investigation.

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

Jed Margolin
1981 Empire Rd.
Reno, NV 89521-7430
775-847-7845
www.jmargolin.com <<http://www.jmargolin.com>>

08-270

Exhibit B

Graham, Courtney B. (HQ-MC000)

From: Graham, Courtney B. (HQ-MC000)
Sent: Wednesday, August 12, 2009 11:33 AM
To: Borda, Gary G. (HQ-MC000); Mcnutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MC000); Hammerle, Kurt G. (JSC-AL111); Fein, Edward K. (JSC-AL111); Homer, Mark W. (HQ-MA000)
Cc: Roan, Bernard J. (JSC-AL111); Steptoe, Jay (HQ-MC000); Sherman, Richard W. (HQ-MA000)
Subject: ACTION REQUIRED: Margolin FOIA Suit
Importance: High

August 12, 2009

All –

Mr. Jed Margolin has filed suit against NASA in Nevada on his June 30, 2008, FOIA request, which requested “all documents related to the Administration Claim of Jed Margolin for Infringement of U.S. Patent Nos. 5,566,073 and 5,904,724; NASA Case No. I-222.” I will need to prepare a litigation report to support this action and we also need to start preparing to answer discovery requests in this matter. Because the FOIA is tied to the administrative claim for patent infringement, I will need copies of all records that each of you may have in your possession relating to either the FOIA request or the administrative claim for patent infringement.

This includes any correspondence or your notes relating to this matter. If you have voluminous electronic documents, please put them on CD. Kurt, Ed, and Mark, I will also ask for your support to preliminarily identify any relevant documents in the possession of your Center clients and provide me with an estimate of the time required to collect those documents as well. I anticipate having more specific requests developed once we receive the initial discovery requests.

Because we are in a litigation posture, please do not destroy, delete or alter any documents that may be relevant to the administrative claim or to the HQ FOIA request. Please also advise any NASA employees who might have responsive documents to ensure they maintain their records pending this matter.

Ed/Kurt/Mark, I'd appreciate any materials delivered to my attention at HQ NLT than end of next week (8/21). HQ folks – the sooner the better.

Thanks in advance for your help on this.

Courtney Bailey Graham
Associate General Counsel (Acting)
Commercial and Intellectual Property Law
Office of the General Counsel
NASA Headquarters
300 E Street, SW, Suite 9T39
Washington, DC 20546
Phone: (202) 358-3648
Cell: (202) 251-0827
Fax: (202) 358-4341

Tracking:

Recipient

Borda, Gary G. (HQ-MC000)
Mcnutt, Jan (HQ-MC000)
Rotella, Robert F. (HQ-MC000)
Hammerle, Kurt G. (JSC-AL111)
Fein, Edward K. (JSC-AL111)
Homer, Mark W. (HQ-MA000)
Roan, Bernard J. (JSC-AL111)
Step toe, Jay (HQ-MC000)
Sherman, Richard W. (HQ-MA000)

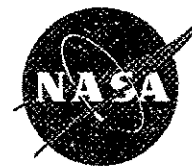
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Read: 8/12/2009 11:50 AM
Read: 8/12/2009 11:42 AM

Read: 8/12/2009 12:04 PM

Exhibit C



National Aeronautics and Space Administration

Headquarters
Washington, DC 20546-0001

January 11, 2010

Reply to Attn of:

Office of the General Counsel

Benjamin Allison
Sutin Thayer & Browne
317 Paseo de Peralta
P.O. Box 2187
Santa Fe, NM 87504

VIA EMAIL and FIRST CLASS MAIL

Re: Objection of Rapid Imaging Software, Inc. to Disclosure of Submitted
Information under FOIA Exemptions (b)(4) and (b)(5)
Jed Margolin v. National Aeronautics and Space Administration
Case No. 3:09-CV-00421-LRH-VPC

Dear Mr. Allison:

Thank you for your letter dated November 11, 2009 stating the objections of Rapid Imaging Software, Inc. ("Rapid Imaging") to the disclosure of certain documents (the "Documents") submitted to the National Aeronautics and Space Administration ("NASA") on the basis that the Documents are exempt from disclosure under 5 U.S.C. § 552(b)(4) (FOIA Exemption 4) and § 552(b)(5) (FOIA Exemption 5). The Documents were identified in a schedule enclosed with our letter to Mr. Michael Abernathy, dated October 28, 2009.

Rapid Imaging asserts that the Documents include both privileged communications between Rapid Imaging and its counsel for the purpose of obtaining legal advice and confidential attorney work product prepared by counsel for Rapid Imaging to supplement Rapid Imaging's defense of potential claims for patent infringement made by Optima Technology Group. The Documents were received by NASA in response to a request by NASA's counsel to Rapid Imaging's counsel. At the time the Documents were provided to NASA, Rapid Imaging expressed its intention and desire that the Documents not be disclosed.

Although Rapid Imaging's intention is not dispositive on the question regarding the releasability of the Documents under the FOIA, the record reflects that NASA obtained the Documents in order to assist it in making a determination with regard to the validity of claims of patent infringement made by Optima Technology Group. The claims against NASA with respect to the same patents and the same technologies as the claims asserted by Optima Technology Group against Rapid Imaging.

Upon review of the facts surrounding NASA's receipt of the Documents, the circumstances surrounding the creation of the Documents (including the selection and collation of the technical publications supporting the legal analyses contained therein), and the arguments and cases cited in your letter, the Agency has determined that the Documents are exempt from disclosure in their entireties as "trade secrets and commercial or financial information obtained from a person which is privileged and confidential" under 5 U.S.C. § 552(b)(4) (FOIA Exemption 4).

Inasmuch as our determination that the Documents are exempt from disclosure under FOIA Exemption 4 is dispositive with regard to release of the Documents under the FOIA in the context of the above-referenced litigation, Jed Margolin v. National Aeronautics and Space Administration, Case No. 3:09-CV-00421-LRH-VPC, NASA reserves its determination on the arguments presented 5 U.S.C. § 552(b)(5) (FOIA Exemption 5) until such time as further consideration of these arguments may be necessary to determine releasability of the Documents.

No response is required from Rapid Imaging with regard to this determination.

Sincerely,



Courtney B. Graham
Associate General Counsel

cc: Gary G. Borda, Esq., Agency Counsel for Intellectual Property

Exhibit D

USPTO Assignments on the Web

<http://assignments.uspto.gov/assignments/q?db=pat&qf=pat&reel=>

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Assignments on the Web > Patent Query**Patent Assignment Abstract of Title****NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.****Total Assignments: 5**Patent #: 5904724

Issue Dt: 05/18/1999

Application #: 08587731

Filing Dt: 01/19/1996

Inventor: JED MARGOLIN

TITLE: METHOD AND APPARATUS FOR REMOTELY PILOTING AN AIRCRAFT

Assignment: 1Reel/Frame: 020279/0880

Recorded: 12/21/2007

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MARGOLIN, JED

Exec Dt: 07/20/2004

Assignee: OPTIMA TECHNOLOGY GROUP, INC.
1981 EMPIRE ROAD
RENO, NEVADA 89521-7430Correspondent: JAY STELACONE
100 CAMBRIDGE STREET, SUITE 2101
BOSTON, MA 02114**Assignment: 2**Reel/Frame: 020218/0085

Recorded: 12/05/2007

Pages: 4

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MARGOLIN, JED

Exec Dt: 12/05/2007

Assignee: OPTIMA TECHNOLOGY CORPORATION (NV)
830 LAS VEGAS BOULEVARD SOUTH
C/O JOHN PETER LEE LIMITED
LAS VEGAS, NEVADA 89101Correspondent: OPTIMA TECHNOLOGY CORPORATION (NV)
C/O JOHN PETER LEE LIMITED
830 LAS VEGAS BPULEVARD SOUTH
LAS VEGAS, NEVADA 89101**Assignment: 3**Reel/Frame: 020218/0089

Recorded: 12/05/2007

Pages: 5

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MARGOLIN, JED BASED ON POWER OF ATTORNEY DATED JULY 20, 2004 TO: OPTIMA TECHNOLOGY CORPORATION (CA)

Exec Dt: 12/05/2007

Assignee: OPTIMA TECHNOLOGY CORPORATION (NV)
830 LAS VEGAS BOULEVARD SOUTH
C/O JOHN PETER LEE LIMITED
LAS VEGAS, NEVADA 89101Correspondent: OPTIMA TECHNOLOGY CORPORATION (NV)
C/O JOHN PETER LEE LIMITED
830 LAS VEGAS BPULEVARD SOUTH
LAS VEGAS, NEVADA 89101**Assignment: 4**Reel/Frame: 020227/0287

Recorded: 12/07/2007

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MARGOLIN, JED

Exec Dt: 12/05/2007

Assignee: OPTIMA TECHNOLOGY CORPORATION (NV)
830 LAS VEGAS BOULEVARD SOUTH
C/O JOHN PETER LEE LIMITED
LAS VEGAS, NEVADA 89101Correspondent: OPTIMA TECHNOLOGY CORPORATION (NV)
C/O JOHN PETER LEE LIMITED
830 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV 89101**Assignment: 5**Reel/Frame: 020279/0563

Recorded: 12/21/2007

Pages: 9

Conveyance: SUBMISSION TO CORRECT ERRORS IN PREVIOUSLY RECORDED DOCUMENTS PURSUANT TO MPEP 323.01(C)

Assignor: OPTIMA TECHNOLOGY GROUP, INC.

Exec Dt: 12/21/2007

04780

USPTO Assignments on the Web

<http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&>

Assignee: OPTIMA TECHNOLOGY GROUP, INC.

1981 EMPIRE ROAD
RENO, NEVADA 89521-7430

Correspondent: JAY STELACONE

100 CAMBRIDGE STREET, SUITE 2101
BOSTON, MA 02114

If you have any comments or questions concerning the data displayed, contact PRO / Assignments at 571-272-3350. v.2.0.1
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OPTIMA TECHNOLOGY CORPORATION

Description

OPTIMA TECHNOLOGY CORPORATION in the Computer Peripheral Equipment, N.E.C. industry in IRVINE, CA. This company currently has approximately 250 to 500 employees and annual sales of \$25,000,000 to \$74,999,999.

Address
2102 BUSINESS CENTER DR
IRVINE, CA 92612

Edit

People at this Company

Edit

| Name | Title |
|--------------|-------|
| ROBERT ADAMS | CEO |

Contact
Phone: (949) 253-5768

Edit

Interact

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Location Information
LINK ID: 123641027

[Link to this page](#)

Key Facts

Edit

Map & Directions

Industry: Computer Peripheral Equipment, N.E.C.
Ownership: Private
Year Founded: 1998
Sales Range: \$25,000,000 to \$74,999,999
Employees: 250 to 500

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- Get sales insights on OPTIMA TECHNOLOGY CORPORATION such as competitors, executives, financial information, and shipping spend
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Optima Technology Corporation Company Profile

Optima Technology can help you optimize your storage efforts. The company develops mass storage hardware and software products and related peripherals. Optima also offers professional services such as consulting, support, and training. The company's products include RAID subsystems, tape subsystems, and storage management software. Optima Technology was founded in 1990.

Contact Information

Address: 2222 Michelson Dr., Ste. 1830
Irvine, CA 92612

Phone: 949-476-0515

Fax: 949-476-0613

Financial Highlights

| | |
|-------------------|----------|
| Fiscal Year End: | December |
| Revenue (2007): | 40.40 M |
| Employees (2007): | 375 |

Key People

- CEO: Robert Adams

Industry Information

Sector: [Technology](#)

Industry: [Business Software & Services](#)

Top Competitors

- [EMC Corporation \(emc\)](#)
- [Hewlett-Packard Company \(hpg\)](#)
- [Symantec Corporation \(symc\)](#)

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Optima Technology Corporation Company Profile - Yahoo! Finance

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Exhibit E

National Aeronautics and Space Administration

Headquarters
Washington, DC 20546-0001



March 19, 2009

Reply to Attn of: Office of the General Counsel

CERTIFIED MAIL

Dr. Robert Adams, CEO
Optima Technology Group
1981 Empire Road
Reno, NV 89521

RE: Administrative Claim for Infringement of US Patent No. 5,904,724;
NASA Case No. I-222

Dear Dr. Adams:

This letter concerns the above-identified administrative claim for patent infringement.

NASA received the initial notification of this claim in an email dated May 12, 2003, from Mr. Jed Margolin addressed to attorneys at the NASA Langley Research Center claiming that "NASA may have used one or more of [Mr. Margolin's] patents in connection with the X-38 project and may be using one or more of my patents in other projects using Synthetic Vision". Mr. Margolin identified two patents that he believed NASA may be infringing; the subject patent and Patent No. 5,566,073. On June 7, 2003, Mr. Margolin submitted his claim by fax to the NASA HQ attorney, Mr. Alan Kennedy. Mr. Kennedy responded by letter dated June 11, 2003 acknowledging the administrative claim and requesting that Mr. Margolin give a more detailed breakdown of the exact articles or processes that constitute the claim. Mr. Margolin responded by letter dated June 17, 2003, withdrawing his claim with regard to U.S. Patent No. 5,566,073, leaving the remaining claim for the subject patent. NASA is aware of the long pendency of this matter and we regret the delay.

On July 14, 2008 Optima Technology Group sent a letter addressed to Mr. Kennedy stating that they were the owners of the Jed Margolin patents due to an assignment and requesting that NASA now license the technology of the subject patent. With an email dated August 6, 2008 from Optima, NASA received a copy of a Patent Assignment, dated July 20, 2004, executed by Jed Margolin, the sole inventor on the subject patent, by which the entire right, title and interest in the patent has been assigned to Optima Technology Group, Inc. We previously noted in a letter dated August 20, 2008 from Mr. Jan McNutt of our office addressed to you that NASA believes there are certain irregularities surrounding this and collateral assignment documents associated with the subject patent. However, NASA will at this time forestall a detailed consideration of that issue. Instead, we will assume your *bona fides* in asserting that you are the legitimate owner of the subject patent and communicate

our findings directly with you. To the extent that Mr. Margolin has any interest in this matter, formally or informally, we will leave it up to you whether or not to communicate with him.

In light of the prior claim by Mr. Margolin, we consider your license proffer as an administrative claim of patent infringement. We turn now to the substance of your claim. In response to your initial letter dated July 14, 2008, Mr. McNutt's August 20, 2008 letter posed a number of questions, the purpose of which was to enable NASA to fully evaluate the details of your claim. Your organization failed to respond to these questions and, further, advanced the position that this matter does not involve a *new claim* (*Adams letter to McNutt, August 25, 2008*). We disagree that this is not a new claim. Nevertheless, NASA proceeds – in order to bring closure to this matter – on the basis that this claim centers around allegations that infringement arose from activities associated with NASA's X-38 Program, as advanced by Mr. Margolin. Accordingly, our investigation of this claim necessarily reflects the answers previously furnished by Mr. Margolin in response to NASA's June 11, 2003 letter to him containing substantially the same set of questions.

U.S. Patent No. 5,904,724 issued with twenty claims, claims 1 and 13 being the sole independent claims.

In order for an accused device to be found infringing, each and every limitation of the claim must be met by the accused device. To support a finding of literal infringement, each limitation of the claim must be met by the accused device exactly, any deviation from the claim precluding a finding of infringement. See *Lantech, Inc. v. Keip Mach. Co.*, 32 F.3d 542 (Fed. Cir. 1994). If an express claim limitation is absent from an accused product, there can be no literal infringement as a matter of law. See *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994).

In applying these legal precepts, reproduced below are the relevant portions of claims 1 and 13.

Claim 1. A system comprising:

* * *

a computer

* * *

said computer is . . . for *determining a delay time* for communicating said flight data between said computer and said remotely piloted aircraft, and wherein said computer adjusts the sensitivity of said set of one or more remote flight controls based on said delay time. (emphasis added.)

Claim 13. A station for flying a remotely piloted aircraft that is real or simulated comprising:

* * *

a computer

* * *

said computer. . . to *determine a delay time* for communicating. . . flight control information between said computer and [a] remotely piloted aircraft, and said computer to adjust the sensitivity of [a] set of remote flight controls based on said delay time. . . .(emphasis added.)

NASA has investigated activities surrounding the X-38 program at its Centers that conducted X-38 development efforts and has determined that no infringement has occurred. This result is compelled because none of NASA's X-38 implementations utilized a computer which is "for determining a delay time for communicating said flight data between said computer and said remotely piloted aircraft," as required by claim 1, nor a "computer ... to determine a delay time for communicating ... flight control information between said computer and [a] remotely piloted aircraft," as required by the limitations of claim 13.

Given that a computer which measures delay time is lacking from the NASA X-38 configuration, it follows that the NASA X-38 configuration had no "adjusting of the sensitivity of [a] set of one or more remote flight controls based on said delay time", as required in claim 1. Similarly, because the NASA X-38 configuration had no "computer to determine a delay time for communicating ... flight control information between said computer and [a] remotely piloted aircraft, the configuration also had no adjusting of "the sensitivity of [a] set of remote flight controls based on said delay time", as called for by claim 13.

For at least the above-explained exemplary reasons, claims 1 and 13 have not been infringed. It is axiomatic that none of the dependent claims may be found infringed unless the claims from which they depend have been found to be infringed. *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546 (Fed. Cir. 1989). One who does not infringe an independent claim cannot infringe a claim dependent on, and thus containing all the limitations of, that claim. *Id.* Thus, none of claims 2-12 and 14-20 have been infringed.

NASA's X-38 development efforts ended in 2002. There may also be other features in NASA's X-38 development efforts that, upon further analysis, would reveal yet more recited claim limitations that are lacking in the NASA configuration related to those efforts.

We also note as a point of particular significance that the limitations included in claims 1 and 13 discussed above were added by amendment during the prosecution of the patent application. It is clear from an analysis of the patent application file wrapper history that the individual prosecuting the application stressed the importance of "the measurement of a communication delay in order to adjust the sensitivity of flight controls based on that delay." Also noted is the distinguishing arguments that these claims require that there be a "computer ... located in the pilot station" and that "at least one real time measurement of the delay and some adjustment is contemplated." (See *Applicant's Amendment and Remark*, February 27, 1998 and *Response Under 37 C.F.R. § 1.116*, July 6, 1998). Clearly, the Patent Office Examiner allowed the application based on these prosecutorial arguments.

We have completed our investigation regarding the claim of patent infringement of U.S. Patent No. 5,904,724 and have determined that there is no patent infringement by, or

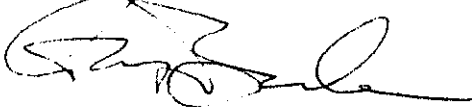
unauthorized use on behalf of, NASA. The above detailed discussion explains the basis for NASA's analysis and decision regarding the subject administrative claim.

As an aside, during NASA's investigation, numerous pieces of evidence were uncovered which would constitute anticipatory prior knowledge and prior art that was never considered by the U.S. Patent and Trademark Office during the prosecution of the application which matured into Patent No. 5,904,724. In view of the clear finding of lack of infringement of this patent, above, NASA has chosen to refrain from a discussion that would demonstrate, in addition to non-infringement, *supra*, invalidity of the subject patent. However, NASA reserves the right to introduce such evidence of invalidity in an appropriate venue, should the same become necessary.

This is a FINAL agency action and constitutes a DENIAL of the subject administrative claim for patent infringement.

Pursuant to 35 U.S.C. § 286, the statute of limitations for the filing of an action of patent infringement in the United States Court of Federal Claims is no longer tolled. Thus, any further appeal of this decision must be made by filing a claim for patent infringement in the United States Court of Federal Claims, pursuant to 28 U.S.C. § 1498(a).

Sincerely,



Gary G. Borda
Agency Counsel for Intellectual Property

Exhibit F

FOIA 08-270

May 14, 2009

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

Dear Mr. Margolin:

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

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

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

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

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

Sincerely,

Original Signed

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

Enclosures