

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JED MARGOLIN,

Plaintiff

v.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Defendant.

Case No. 3:09-cv-00421-LRH-(VPC)

Appendix Volume 2

For Motion For Summary Judgment

Jed Margolin
1981 Empire Rd.
VC Highlands, NV 89521-7430
Phone: 775-847-7845
Email: jm@jmargolin.com

Dated: June 9, 2010

Appendix Volume 2 - Index

I. Exhibit 11 - Part 1: Redacted emails produced by NASA A4

Exhibit 11

Exhibit 11



National Aeronautics and Space Administration

Headquarters

Washington, DC 20546-0001

November 5, 2009

Reply to Attn of: 08-HQ-F-00270

Mr. Jed Margolin
1981 Empire Road
Reno, NV 89521

Dear Mr. Margolin:

This is a supplemental response to your Freedom of Information Act (FOIA) request for "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," from the files of the National Aeronautics and Space Administration (NASA).

Although arguably outside the scope of your request to the NASA Headquarters FOIA Office, NASA has expanded its search to identify additional records, provided by offices located at the Johnson Space Center (JSC), Langley Research Center (LaRC), the NASA Management Office (NMO) and Headquarters (HQ), which are considered responsive to your request. These enclosed documents, consisting of approximately 4,000 pages of agency records are a part of a system of records exempt from the mandatory disclosure provisions under Title 5, USC §552 of the FOIA. Certain documents and portions of documents have been withheld under applicable FOIA exemptions.

The removal of this information constitutes a partial denial pursuant to the following provisions of Title 5, USC, §552:

(b)(3) – implementing nondisclosure provisions that are contained in 41 U.S.C. § 253b, which protects "proposals in the possession or control of an executive agency";

(b)(4) – which protects "trade secrets and commercial or financial information obtained from a person that is privileged or confidential";

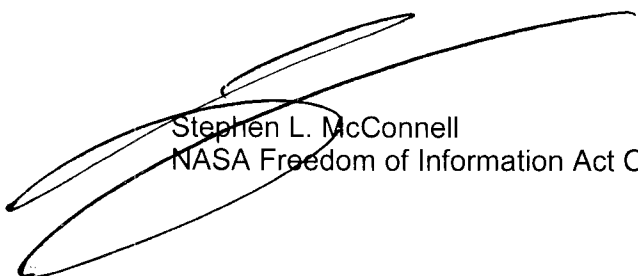
(b)(5) – which protects inter-agency documents generated which "are predecisional and/or deliberative in nature" and information protected as attorney work product; and

(b)(6) – which protects the privacy interests of individuals by protecting "information concerning his or her person."

Since you have appealed the initial response to this FOIA and instituted litigation against NASA on your request, your administrative remedies stemming from this supplemental response have been exhausted and any appeal on this supplemental response must be addressed in that action.

Any further questions should be directed to the undersigned, at (202) 358-0068.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Stephen L. McConnell
NASA Freedom of Information Act Officer

From: Fein, Edward K. (JSC-AL)
Sent: Tuesday, September 26, 2006 9:11 AM
To: Kennedy, Alan J. (HQ-MC000)
Cc: Borda, Gary G. (HQ-MC000)
Subject: FW: and the very last communication of the day
Attachments: PSISDG_3691_1_149_1.pdf

fyi ...

From: Mike Abernathy [redacted] (b)(6)
Sent: Monday, September 25, 2006 8:18 PM
To: Delgado, Francisco J. (JSC-ER2); Fein, Edward K. (JSC-AL)
Subject: FW: and the very last communication of the day

Mike Abernathy
Rapid Imaging Software, Inc.

From: Mike Abernathy [redacted] (b)(6)
Sent: Monday, September 25, 2006 6:25 PM
To: FEIN, EDWARD K. (JSC-HA) (NASA); DELGADO FRANCISCO J. (FRANK) (francisco.j.delgado@jsc.nasa.gov); Kennedy, Alan J. (HQ-MC000); 'Scinder@landform.com'; 'moore@osd.af.mil'; 'Moore, Thomas, Mr, OSD-ATL'; 'Davey, Jon (Bingaman)'
Subject: and the very last communication of the day

Hi All,

Let me summarize what I think has just happened to our company.

In late 1995 we introduce our LandForm synthetic vision system to the market as COTS software product.

In 1997/8 we sell this to NASA and together we are the first people on earth to create a synthetic vision flight guidance system for a remotely piloted vehicle. Starting in 1998 the X38 is captive carried and test flown using this system. We documented our success in the attached document written in 1998 and published in early 1999. It was my privilege to be at Edwards when it happened, and is the highlight of my career until the program is cancelled in 2002.

We go on and demonstrate that our software can be used as pilot aid to other UAVs including Predator, Shadow, Tern, and many more. We receive no interest in this application, but instead they use it for sensor operator stations. It is a commercial success and people say good things about it. It is sold to mostly to a commercial UAV manufacturer named AAI Corporation. Many tests are done and the military guys all like it.

In 1999 the patent office issues a patent to a former Atari employee named Margolin for a Synthetic Environment for Remotely Piloted Vehicle. He had evidently applied for it in 1996. Shortly thereafter he begins to complain to NASA that they and RIS infringed upon his patent presumably by flying a system 2 years before he received his patent. Is this a joke?

In 7 years he never so much as asked RIS about using his technology. Margolin as best I can tell never built this system and never test flew it. Can't say as I blame him because his system looks to me like a crater looking for an address. It cannot be safely operated in the form patented (no autopilot). No one is even stupid enough to build it this way, not even him.

Sometime after that, I am alerted to the patent. I read it, but since there are major differences in the way X-38 worked with our software, I felt strongly that we had not infringed. I provide this information, plus evidence of prior art to NASA legal counsel. I am troubled because really I can't see how his system could fly because it would fail during link loss.

Margolin also had a patent on synthetic vision for manned aircraft (if you can imagine) and we found copious prior art for that. I am also troubled because I never hear that the request for reexamination has been sent in by NASA.

Last week I received an email from Optima technology group threatening (thinly veiled) to destroy our relationships with our customers and sue us if we don't license their technologies. We explain that we do not sell software for use in piloting unmanned aerial vehicles any more owing to insurance which is true. We had demonstrated this in the past, but there really is not much market that we could see. We also explained that we had not infringed and why we thought we had been respectful of their patent, but they just tried to make it look like we infringed. But we did not.

They know we cannot withstand the onslaught of their lawsuits, even though we are clearly and obviously not guilty of infringement. They think that we will have to fold and accept their license, but we cannot do this because they are legal blackmailers, and because they are selling defective technology. If we give in, then they will just destroy some other little companies they way they did ours. And we cannot let anyone pay them off for us, because that just gives them funds to go destroy another company. For many years our company has tried to provide an innovative product with an excellent value and never compromise our integrity. I cannot let this nonsense bring that to an end by pretending that we are licensing technology when what they are selling is a fraud.

When I asked politely if their system has ever been tested Mr. Adams simply tells us to go get a lawyer, he is referring the matter for filing. I felt that it was not unreasonable to ask to know this but it really made him furious. Anyway I told him to tell it to our lawyer Mr. Ben Allison of Sutinfirm with whom I shall meet tomorrow. Tonight they said that they will issue a cease and desist order, which I believe means that we will be unable to sell our software anymore which will destroy our income stream and that will be it. I can't waste anymore time on this now. It is time for me to get back to work on things that matter for our users.

I have a docs appointment tomorrow at 8-10 local time. I had throat surgery recently so I really can't talk and frankly I find I tend to break into tears very frequently when I try to do so. But I want you all to know that I will stand firm until it is over. What would the soldiers who have used our software in combat think of me if I gave ground? Then bring it on.

I know it sounds bad for us right now, but remember that whatever happens to us no one can take away the honor and the privilege of working with NASA, the OSD, and all the other completely excellent people with whom we have worked.

Mike Abernathy
Rapid Imaging Software, Inc.

Attached are the other communications from them.

From: Robert Adams [mailto:ra@rapidimaging.com] (b)(6)
Sent: Monday, September 25, 2006 3:51 PM
To: 'Mike Abernathy'
Subject: RE: license

Mike,

Let me try and be clear, all such development at OTG on behalf and or/or by our licensee is covered by NDA's and thus our company can be sued should we violate such agreements. As to your company's infringement of our patents, since that was clearly not covered by a NDA with us; please provide said information in detail:

1. Other than those items listed at your website and NASA's, what other projects did you do that infringed on our invention? If so when, where, and how?
2. Who at NASA flight-tested your product that used our invention? Please provide us with the name of the Pilot in Command, the responsible Flight Test Engineer, the model and block number of the vehicle and GCS, and the range or location at which such testing might have taken place with NASA and others. Also, indicate the dates of such testing. If flight test reports are available, as well please provide them to us.

Mike, I have no time to play games with someone who clearly infringes and thinks nothing of respecting our IP.

I will forward said matter to our legal department for further research and filing in accordance with the Federal laws. Please have your legal IP counsel contact our attorneys.

Robert Adams

Appendix Volume 2 - A7

From: Mike Abernathy [REDACTED]
Sent: Monday, September 25, 2006 2:26 PM
To: 'Robert Adams'
Subject: RE: license

(b)(6)

Robert,

You have offered to license your technology to our company. You have stated that this technology is useful for "see and avoid applications" for UAVs which is an interesting market arena. We are making a good faith effort to consider your offer. We must know whether this technology has been brought into existence and whether it was ever test flown as a matter of due diligence.

We are not asking these questions out of idle curiosity and we certainly not trying to be difficult – we need this information in order to know the market value of the technology to our users, and there are certain elements of the method that we have concerns about. A flight test report – even if the system was implemented on a model airplane – will almost certainly allay our concerns and we can get on with this. The fact of whether or not this technology has been tested does not require an NDA.

Robert, throughout our dealings I have been honest and responsive to all of your requests, perhaps at peril to our company. I now ask you to please reciprocate my efforts in a small way and provide the requested information so that we may consider your offer of license.

Mike Abernathy
Rapid Imaging Software, Inc.

From: Robert Adams [REDACTED]
Sent: Monday, September 25, 2006 2:49 PM
To: 'Mike Abernathy'
Subject: RE: license

(b)(6)

Mike,

Neither the company nor I are in any way anxious in signing any more licensees's as we have many already, but as you know we must protect our patents in order to preserve said Intellectual Property.

As to your questions, they do not relate to a license and/or a licensee. Our Intellectual Property has been tested in court and is proven solid by far such standards the Federal Court including the Federal Appeals Court. In addition, as to matters of disclosure, all such development at OTG and by our licensee is covered by NDA's.

Should you wish to challenge such, then I advise you to seek proper legal counseling as we are not an attorney nor will ours advice you on such a matters.

Your company has clearly infringed and OTG must protect itself against such matters just as your company would do if in the same position.

Robert Adams

From: Mike Abernathy [REDACTED]
Sent: Monday, September 25, 2006 1:29 PM
To: 'Robert Adams'
Subject: license

(b)(6)

Dear Robert,

Please tell the legal team thanks for getting back to us right away – we appreciate it.

You have asked us to consider licensing and this we are now doing. In the interest of due diligence as a prospective licensor of your technology, we ask that you provide us with the following information about the subject invention:

3. Was this invention ever constructed? If so when, where, and how?
4. Was this invention ever flight tested? Please provide us with the name of the Pilot in Command, the responsible Flight Test Engineer, the model and block number of the vehicle and GCS, and the range or location at which such testing might have taken place. Also, indicate the dates of such testing. If flight test reports are available please provide them to us, as well.

I know that you are anxious for us to consider your license offer, please provide us with this information.

Mike Abernathy
Rapid Imaging Software, Inc.

[REDACTED]

From: Kennedy, Alan J. (HQ-MC000)
Sent: Wednesday, September 27, 2006 2:11 PM
To: Mike Abernathy
Cc: Fein, Edward K. (JSC-AL); Borda, Gary G. (HQ-MC000)
Subject: RE: help

Mike,

As I said in my voice mail and in our phone conversation, we can help with any products that you sell to NASA such as software for the X-38 aircraft. Tell Optima that I said to contact me regarding any cease and desist threats pertaining your NASA business. However, we cannot interfere in your non-Government (NASA) commercial activities or sales.

Call me if you have any questions regarding your NASA business sales.

Thanks,

Alan

From: Mike Abernathy [REDACTED] - (b)(6)
Sent: Wednesday, September 27, 2006 9:13 AM
To: Kennedy, Alan J. (HQ-MC000); FEIN, EDWARD K. (JSC-HA) (NASA); [REDACTED]
Subject: help

Alan and Ed,

We have received a cease and desist from Optima. I am afraid that they will file a suit against us, and from what Ben says we would certainly go broke defending it. Like most small companies we have little cash on hand and we are going to need to put up \$10k just for what is happening now. Will you please help us? Otherwise Ben says we will need to start negotiations with Optima. Please talk to us.

Best regards,

Mike Abernathy
Rapid Imaging Software, Inc.
[REDACTED] (b)(6)
www.landform.com

00033

Date: Thu, 02 Nov 2006 13:21:53 -0800

To: Chauncey C Williams <[REDACTED]>

Conversation: [REDACTED]

Subject: FW: [REDACTED]

(b)(6)

Hi Chauncey,

Sorry for the late action on this one. I have not heard of this gentleman before; however, the "Francisco Delgado" listed at the bottom of the e-mail is a JSC employee.

May I ask for your help on this?

Thanks!

yk

----- Forwarded Message

From: Robert Adams <[REDACTED]>

Organization: Optima Technology Group

Date: Fri, 29 Sep 2006 11:58:36 -0700

To: <yvonne.kellogg@dfrc.nasa.gov>

Subject: [REDACTED]

(b)(6)

(b)(6)

RE:

Optima Pilot aid using a synthetic environment License Agreement U.S. Patent Nos. 5,566,073

Optima Method and apparatus for remotely piloting an aircraft License Agreement U.S. Patent Nos. 5,904,724

Yvonne,

My name is Dr. Robert Adams. I am the CEO and owner of Optima Technology Group which owns a United States patent portfolio that includes the above identified two patents above(1.1) ("the Patents"), OTG the entity to which our chief scientist Jed Margolin has assigned the Patents. As I am sure you are aware of, the Patents protect a number of features that are implemented in products capable of flying any and all UAV's (1.3) remotely piloting said UAV and/or using Synthetic Vision and/or using a synthetic environment.

Based on the current conversations with many of your contractors who have now licensed our technology, they have informed us that NASA is indeed aware of our patents for some time. To support said information we also now have the web log files of the last few years that we now see detailed visits by NASA that report in detail both as to what was the NASA server's name used and many more details that I am sure would be of interest in discovery

Yvonne, I see that NASA is busy making sure that technology they invent is patented and then licensed in order to bring in revenue as noted by the link about your group:
<http://www.dfrc.nasa.gov/Newsroom/X-Press/1999/June11/techcom.html>

So like your group, my company is in the same business and that is in licensing our IP technology to companies like yours that already use and/or infringe on said technology. We do prefer to have a friendly discussion that leads to a productive and proper license of our technology by NASA and other vendors who may use it with your company. Thus, we would like to discuss the two related patents that belong to OTG and discuss a license and/or a technology transfer to NASA so that your group and NASA can continue the work unencumbered.

Let's, chat and work out the details of a license agreement,

Respectfully, Dr. R.M. Adams

P.s. Please say hello to Francisco Delgado for me and thank him for all his help in this matter.

Dr. Robert Adams – CEO
Optima Technology Group

 (b) (6)

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----- End of Forwarded Message

----- End of Forwarded Message

From: McNutt, Jan (HQ-MC000)
Sent: Wednesday, August 06, 2008 9:23 AM
To: Robert Adams-OTG
Subject: Optima Letter
Attachments: Optima Letter 20080801.pdf

Dr. Adams,

Please see attached.

Jan S. McNutt
Attorney-Advisor (Commercial)
Office of the General Counsel
NASA Headquarters

[Redacted]

(b)(6)

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From: Robert Adams-OTG [Redacted] (b)(6)
Sent: Tuesday, August 05, 2008 3:06 PM
To: McNutt, Jan (HQ-MC000)
Subject: [Redacted] (b)(4)

From: Robert Adams-OTG [Redacted] (b)(6)
Sent: Monday, August 04, 2008 6:21 PM
To: [Redacted] (b)(6)
Cc: M. Lawrence Oliverio
Subject: [Redacted] E,

[Redacted]

(b)(4)

00042

Jan,

Can you please forward me a copy of the letter that you stated was sent out last Friday? Considering that we have already started licensing (see attached non-exclusive) said technology and are actively conducting talks with other infringers, it's in our best interest to enforce said IP. We also have recently starting suing infringers in Federal court and one is settling now as we speak. We may consider a Technology Transfer depending on the interest and offer.

Our goal with NASA is to resolve this infringement matter quickly and peacefully verse wasting any more time on the matter.

As to statute of limitations waiver, at this time we would not be agreeable but we may consider a tolling agreement.

Thank you,

Dr. Robert Adams – CEO
Optima Technology Group

(b)(6)

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00043

National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-0001



August 1, 2008

Reply to Attn of: Office of the General Counsel

Dr. Robert Adams, CEO
Optima Technology Group

[Redacted] (b)(6)
[Redacted]

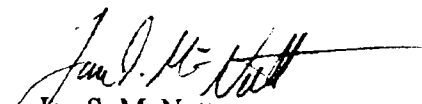
Re: U.S. Patents Nos. 5,904,724 and 5,566,073

Dear Dr. Adams:

We are in receipt of your letter dated July 14, 2008 informing our office of an assignment of two patents by the inventor Mr. Jed Margolin. While Mr. Margolin's infringement claims are currently under investigation, we do not have any information from Mr. Margolin confirming the alleged assignment of his patents to your firm. Although your letter included copies of two licensing agreements, there is likewise no evidence of an assignment of the said inventions in the communication you sent to us. Until we receive appropriate evidence of such an assignment, we are not able to respond to your request for a license from our Agency.

Please refer any future correspondence in this matter to the undersigned, Mr. Jan S. McNutt,
[Redacted] (b)(6)

Sincerely,


Jan S. McNutt
Attorney-Advisor

00044

[REDACTED]
From: McNutt, Jan (HQ-MC000)
Sent: Wednesday, August 06, 2008 9:44 AM
To: Jed Margolin
Subject: RE: NASA Case I-222 (Margolin Letter)
Attachments: Margolin Letter 20080805.pdf

Dear Mr. Margolin,

Please see the attached. Hard copy to follow.

Jan S. McNutt
Attorney-Advisor (Commercial)
Office of the General Counsel
NASA Headquarters

[REDACTED] (b)(6)
[REDACTED]
[REDACTED]
[REDACTED]

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-----Original Message-----
From: Jed Margolin [mailto:[REDACTED]] (b)(6)
Sent: Tuesday, August 05, 2008 1:56 PM
To: McNutt, Jan (HQ-MC000)
Subject: NASA Case I-222

Dear Mr. McNutt.

I have attached the documents we discussed.

Regards,

Jed Margolin

00035



National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-0001

August 5, 2008

Reply to Attn of: Office of the General Counsel

Mr. Jed Margolin

[Redacted]

(b)(6)

Re: Administrative Claim of Jed Margolin for Infringement of U.S. Patent
Nos. 5,566,073 and 5,904,724; NASA Case No. I-222.

Dear Mr. Margolin,

We are in receipt of the Freedom of Information Act Request (FOIA) conveyed to us by email dated June 30, 2008 in which you request copies of all documentation relating to your administrative claim of infringement of U.S. Patent Nos. 5,566,073 and 5,904,724.

We regret the delay in processing your claim and assure you that we are now undertaking measures to provide a resolution of your claim as soon as possible. Unfortunately, Mr. Alan Kennedy retired from NASA earlier this year and the action on your claim was not conveyed to management in a timely manner. In addition the local attorney responsible for review of your claim also departed from NASA. We are now cognizant of the importance of proceeding with a review of the claim and will contact you when we have reached a decision.

As to your FOIA request, as the investigation of your claim is ongoing, we kindly request that you allow us a 90 day extension to answer this request. Within that time period we should be able to obtain a better picture of our position vis-à-vis your claim and the request for documents may no longer be required.

We should inform you that we have received a separate communication from a company Optima Technology Group, claiming to have been assigned both of the patents in question. You informed me telephonically that this is the case; however, we have no record of any assignment of your patents to this firm and will need confirmation through appropriate attested documents delivered to the agency in order to recognize any claim of ownership by a party other than the inventor.

Thank you for your patience in this matter. Please contact the undersigned at [Redacted] or email [Redacted] if you have any additional questions or comments.

(b)(6)

(b)(6)

Sincerely,

Jan S. McNutt
Jan S. McNutt
Attorney-Advisor

00045

From: McNutt, Jan (HQ-MC000)
Sent: Wednesday, August 06, 2008 11:54 AM
To: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)
Subject: Margolin-Optima Assignment
Attachments: jm_assign.pdf

[Redacted] (b)(5)

From: Robert Adams-OTG [Redacted] (b)(6)
Sent: Wednesday, August 06, 2008 11:17 AM
To: McNutt, Jan (HQ-MC000)
Subject: [Redacted]

[Redacted] (b)(4)

Jan,
Based on the conversation with you and Jed, I was told by Jed that he walked you through the Patent & Trade Mark office's website and you had access to see the assignment.

If that was not acceptable, then please see the attachment concerning the fully executed assignment.

As time is short due to the delays in reviewing the matter on your end. We are acceptable to not clogging up the court system as we currently have one active case before the Federal court on 073" and would prefer licensing NASA and/or settling with you.

I look forward to hearing from you shortly.

Thank you,
Dr. Adams

From: McNutt, Jan (HQ-MC000) [Redacted] (b)(6)
Sent: Wednesday, August 06, 2008 6:23 AM
To: Robert Adams-OTG
Subject: [Redacted] (b)(4)

Dr. Adams,
Please see attached.

Jan S. McNutt
Attorney-Advisor (Commercial)
Office of the General Counsel

NASA Headquarters

[REDACTED]

(b)(6)

This document, including any attachments, contains information may be confidential, protected by the attorney-client or other applicable privileges, or constitutes non-public information. All content is intended only for the designated recipient(s). If you are not an intended recipient of this information or have received this message inadvertently, please take appropriate steps to destroy this content in its entirety and notify the sender of its destruction. Use, dissemination, distribution, or reproduction of this information by unintended recipients or in a manner inconsistent with its provision is not authorized and may be unlawful.

From: Robert Adams-OTG [REDACTED] (b)(6)
Sent: Tuesday, August 05, 2008 3:06 PM
To: McNutt, Jan (HQ-MC000)
Subject: [REDACTED]

From: Robert Adams-OTG [REDACTED] (b)(6)
Sent: Monday, August 04, 2008 6:21 PM
To: [REDACTED] (b)(6)
Cc: 'M. Lawrence Oliverio'
Subject: [REDACTED]

(B)(4)

[REDACTED]

Jan,

Can you please forward me a copy of the letter that you stated was sent out last Friday? Considering that we have already started licensing (see attached non-exclusive) said technology and are actively conducting talks with other infringers, it's in our best interest to enforce said IP. We also have recently starting suing infringers in Federal court and one is settling now as we speak. We may consider a Technology Transfer depending on the interest and offer.

Our goal with NASA is to resolve this infringement matter quickly and peacefully verse wasting any more time on the matter.

As to statute of limitations waiver, at this time we would not be agreeable but we may consider a tolling agreement.

Thank you,

Dr. Robert Adams – CEO
Optima Technology Group

[REDACTED] (b)(6)

00048

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00019

[REDACTED]

From: McNutt, Jan (HQ-MC000)
Sent: Wednesday, August 06, 2008 2:36 PM
To: Fein, Edward K. (JSC-AL)
Cc: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)
Subject: Patent Infringement claim from Jed Margolin; NASA Case No. I-222

(b)(5)



[REDACTED] Margolin FOIA.pdf Letter from Optima
20080714.pd...

[REDACTED]

Jan S. McNutt
Attorney-Advisor (Commercial)
Office of the General Counsel
NASA Headquarters

(b)(6)

00057

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 <[REDACTED]> (b)(6)
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

[REDACTED] (b)(6)

www.jmargolin.com <<http://www.jmargolin.com>>

08-270

00061

From: Fein, Edward K. (JSC-AL)
Sent: Wednesday, August 06, 2008 3:29 PM
To: McNutt, Jan (HQ-MC000)
Cc: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)
Subject: RE: Patent Infringement claim from Jed Margolin; NASA Case No. I-222

RE: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

From: Mike Abernathy [REDACTED] (b)(6)
To: 'Delgado, Francisco J. (JSC-ER2)' [REDACTED], 'Fein, Edward K. (JSC-AL)' [REDACTED], 'Kennedy, Alan J. (HQ-MC000)' [REDACTED]
CC: 'Fredrickson, Steven E. (JSC-ER)' [REDACTED]
Date: Sep 26 2006 / 12:13pm

Thank you very much. It means very much to Carolyn and I right now.

Mike Abernathy

Rapid Imaging Software, Inc.

From: Delgado, Francisco J. (JSC-ER2) [REDACTED] (b)(6)
Sent: Monday, September 25, 2006 9:42 PM
To: Mike Abernathy; Fein, Edward K. (JSC-AL); Kennedy, Alan J. (HQ-MC000); [REDACTED]
Cc: Delgado, Francisco J. (JSC-ER2); Fredrickson, Steven E. (JSC-ER)
Subject: FW: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

See email from "Mr. Adams" below.

This is getting more ridiculous by the minute. I have resisted replying in any form as suggested by JSC council. However, this matter has been left open for quite some time and something needs to be done NOW. It has come to my attention that Mr. Adams and company have issued a letter that prohibits RIS from selling any of their software until this issue is resolved. We have had a very "intellectually" fruitful relationship with RIS for almost a decade and would like to

continue this relationship for many years to come. Some of the technology concepts in question were co-developed by RIS and I during many "brainstorming sessions" on how to provide optimal situation awareness to various users.

The folks pressing forward with this claim do not have solid ground to stand on (IMHO). Based on the previous research performed, I do not see how their patent claims are valid and I would like to request that NASA's council take this matter seriously and get the patents invalidated (as it should have been done when this first showed up a couple of years ago). This is not only the right legal thing to do, but also the right moral thing to do. If we allow an individual to continue to harass small companies and stand-by with little/no action, then we are no better than the company doing the harassing. As a government organization, we need to keep the public faith and trust and again, "do the right thing." I realize that patience is important in legal matter, but believe that the time for sitting idle and hoping that this matter goes away is way past due and that something needs to be done ASAP. Putting companies that NASA relies on to help move technology forward out of business with a barrage of unwarranted litigation does not seem like it is in NASA's (or our taxpayers) best interest.

Please let me know what I need to do on my end to help move this along.

BTW: If we do not deal with issue immediately it will only get worse for NASA. I know of several Projects within JSC, JPL, and Langley that use independently developed technology (i.e. technology that does not use what RIS and I came up with) that I am sure Mr. Adams and company would claim infringes on their "Patents." We seem to be on his radar at the moment because we do what government organizations are encouraged to do ("Publish their work").

Thank You,

Frank Delgado

(b)(6) From: Robert Adams [mailto: [REDACTED]]
Sent: Mon 9/25/2006 5:58 PM
To: Delgado, Francisco J. (JSC-ER2)
Subject: RE: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

Sir,

Since you have clearly refused to cooperate, please provide us your department's heads information and said contact information including a contact in your IP litigation department. We are aware that you received your read receipt of our email sent to you regarding:

Let us chat on about SCOUT, SC3D, the X-38 program, and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

United States Patent 5,566,073 Margolin October 15, 1996 Pilot aid using a synthetic environment

United States Patent 5,904,724 Margolin May 18, 1999, Method and apparatus for remotely piloting an aircraft

We simple have one goal in mind and that is have a chat regarding the technology and that RIS and NASA take a license of said IP technology.

Thank you

From: Delgado, Francisco J. (JSC-ER2) [mailto: [REDACTED]] (b)(6)

00065

Sent: Tuesday, September 19, 2006 7:30 AM

Subject: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

Your message

To: Delgado, Francisco J. (JSC-ER2)

Cc:

Subject: Let us chat on about SCOUT, SC3D, the X-38 program and RIS;

noted below are our patents that cover said technology that RIS and your groups are using.

Sent: Tue, 19 Sep 2006 08:52:25 -0500

was read on Tue, 19 Sep 2006 09:30:05 -0500

RE: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

From: Fein, Edward K. (JSC-AL) <[redacted]> (b)(6)
To: Delgado, Francisco J. (JSC-ER2) <[redacted]>, Kennedy, Alan J. (HQ-MC000) <[redacted]>
Date: Sep 26 2006 - 10:58am (b)(6)

Frank ... I've talked with Alan, and he said he'd respond, and give you a call.

-Ed

RE: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

From: Mike Abernathy <[redacted]> (b)(6)
To: 'Delgado, Francisco J. (JSC-ER2)' <[redacted]>, 'Fein, Edward K. (JSC-AL)' <[redacted]>, 'Kennedy, Alan J. (HQ-MC000)' <[redacted]>
CC: 'Fredrickson, Steven E. (JSC-ER)' <[redacted]> (b)(6)
Date: Sep 26 2006 - 12:13pm (b)(6)

Thank you very much. It means very much to Carolyn and I right now.

Mike Abernathy

Rapid Imaging Software, Inc.

00066

From: Delgado, Francisco J. (JSC-ER2) [mailto:[REDACTED]] - (b)(6)
Sent: Monday, September 25, 2006 9:42 PM
To: Mike Abernathy; Fein, Edward K. (JSC-AL); Kennedy, Alan J. (HQ-MC000); [REDACTED]
Cc: Delgado, Francisco J. (JSC-ER2); Fredrickson, Steven E. (JSC-ER)
Subject: FW: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

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Thank You,

Frank Delgado

From: Robert Adams ([REDACTED]) (b)(6)
Sent: Mon 9/25/2006 5:58 PM
To: Delgado, Francisco J. (JSC-ER2)
Subject: RE: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

Sir,

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United States Patent 5,566,073 Margolin October 15, 1996 Pilot aid using a synthetic environment

United States Patent 5,904,724 Margolin May 18, 1999, Method and apparatus for remotely piloting an aircraft

We simple have one goal in mind and that is have a chat regarding the technology and that RIS and NASA take a license of said IP technology.

Thank you

From: Delgado, Francisco J. (JSC-ER2) [REDACTED] (b)(6)
Sent: Tuesday, September 19, 2006 7:30 AM
Subject: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

Your message

To: Delgado, Francisco J. (JSC-ER2)
Cc:
Subject: Let us chat on about SCOUT, SC3D, the X-38 program and RIS;
noted below are our patents that cover said technology that RIS and your groups are using.

Sent: Tue, 19 Sep 2006 08:52:25 -0500
was read on Tue, 19 Sep 2006 09:30:05 -0500

FW: and the very last communication of the day

From: Fein, Edward K. (JSC-AL) [REDACTED]
To: Kennedy, Alan J. (HQ-MC000) [REDACTED] (b)(6)
CC: Borda, Gary G. (HQ-MC000) [REDACTED] (b)(6)
Date: Sep 26 2006 - 8:11am

[REDACTED]

(b)(5)

From: Mike Abernathy [REDACTED] (b)(6)
Sent: Monday, September 25, 2006 8:18 PM
To: Delgado, Francisco J. (JSC-ER2); Fein, Edward K. (JSC-AL)
Subject: FW: and the very last communication of the day

00063

Mike Abernathy

Rapid Imaging Software, Inc.

From: Mike Abernathy [mailto: [REDACTED]] (b)(6)
Sent: Monday, September 25, 2006 6:25 PM (b)(6)
To: FEIN, EDWARD K. (JSC-HA) (NASA); DELGADO FRANCISCO J. (FRANK) ([REDACTED]);
Kennedy, Alan J. (HQ-MC000); [REDACTED]; 'Moore, Thomas, Mr, OSD-ATL';
'Davey, Jon (Bingaman)'
Subject: and the very last communication of the day (b)(6)

Hi All,

Let me summarize what I think has just happened to our company.

In late 1995 we introduce our LandForm synthetic vision system to the market as COTS software product.

In 1997/8 we sell this to NASA and together we are the first people on earth to create a synthetic vision flight guidance system for a remotely piloted vehicle. Starting in 1998 the X38 is captive carried and test flown using this system. We documented our success in the attached document written in 1998 and published in early 1999. It was my privilege to be at Edwards when it happened, and is the highlight of my career until the program is cancelled in 2002.

We go on and demonstrate that our software can be used as pilot aid to other UAVs including Predator, Shadow, Tern, and many more. We receive no interest in this application, but instead they use it for sensor operator stations. It is a commercial success and people say good things about it. It is sold to mostly to a commercial UAV manufacturer named AAI Corporation. Many tests are done and the military guys all like it.

In 1999 the patent office issues a patent to a former Atari employee named Margolin for a Synthetic Environment for Remotely Piloted Vehicle. He had evidently applied for it in 1996. Shortly thereafter he begins to complain to NASA that they and RIS infringed upon his patent presumably by flying a system 2 years before he received his patent. Is this a joke?

In 7 years he never so much as asked RIS about using his technology. Margolin as best I can tell never built this system and never test flew it. Can't say as I blame him because his system looks to me like a crater looking for an address. It cannot be safely operated in the form patented (no autopilot). No one is even stupid enough to build it this way, not even him.

00069

Sometime after that, I am alerted to the patent. I read it, but since there are major differences in the way X-38 worked with our software, I felt strongly that we had not infringed. I provide this information, plus evidence of prior art to NASA legal counsel. I am troubled because really I can't see how his system could fly because it would fail during link loss. Margolin also had a patent on synthetic vision for manned aircraft (if you can imagine) and we found copious prior art for that. I am also troubled because I never hear that the request for reexamination has been sent in by NASA.

Last week I received an email from Optima technology group threatening (thinly veiled) to destroy our relationships with our customers and sue us if we don't license their technologies. We explain that we do not sell software for use in piloting unmanned aerial vehicles any more owing to insurance which is true. We had demonstrated this in the past, but there really is not much market that we could see. We also explained that we had not infringed and why we thought we had been respectful of their patent, but they just tried to make it look like we infringed. But we did not.

They know we cannot withstand the onslaught of their lawsuits, even though we are clearly and obviously not guilty of infringement. They think that we will have to fold and accept their license, but we cannot do this because they are legal blackmailers, and because they are selling defective technology. If we give in, then they will just destroy some other little companies they way they did ours. And we cannot let anyone pay them off for us, because that just gives them funds to go destroy another company. For many years our company has tried to provide an innovative product with an excellent value and never compromise our integrity. I cannot let this nonsense bring that to an end by pretending that we are licensing technology when what they are selling is a fraud.

When I asked politely if their system has ever been tested Mr. Adams simply tells us to go get a lawyer, he is referring the matter for filing. I felt that it was not unreasonable to ask to know this but it really made him furious. Anyway I told him to tell it to our lawyer Mr. Ben Allison of Sutinfirm with whom I shall meet tomorrow. Tonight they said that they will issue a cease and desist order, which I believe means that we will be unable to sell our software anymore which will destroy our income stream and that will be it. I can't waste anymore time on this now. It is time for me to get back to work on things that matter for our users.

I have a docs appointment tomorrow at 8-10 local time. I had throat surgery recently so I really can't talk and frankly I find I tend to break into tears very frequently when I try to do so. But I want you all to know that I will stand firm until it is over. What would the soldiers who have used our software in combat think of me if I gave ground? Then bring it on.

I know it sounds bad for us right now, but remember that whatever happens to us no one can take away the honor and the privilege of working with NASA, the OSD, and all the other completely excellent people with whom we have worked.

Mike Abernathy

Rapid Imaging Software, Inc.

Attached are the other communications from them.

From: Robert Adams [mailto:ra@rapidimaging.com]
Sent: Monday, September 25, 2006 3:51 PM
To: 'Mike Abernathy'
Subject: RE: license

(b)(6)

000000

Mike,

Let me try and be clear, all such development at OTG on behalf and or/or by our licensee is covered by NDA's and thus our company can be sued should we violate such agreements. As to your company's infringement of our patents, since that was clearly not covered by a NDA with us; please provide said information in detail:

Other than those items listed at your website and NASA's, what other projects did you do that infringed on our invention? If so when, where, and how?

Who at NASA flight-tested your product that used our invention? Please provide us with the name of the Pilot in Command, the responsible Flight Test Engineer, the model and block number of the vehicle and GCS, and the range or location at which such testing might have taken place with NASA and others. Also, indicate the dates of such testing. If flight test reports are available, as well please provide them to us.

Mike, I have no time to play games with someone who clearly infringes and thinks nothing of respecting our IP.

I will forward said matter to our legal department for further research and filing in accordance with the Federal laws. Please have your legal IP counsel contact our attorneys.

Robert Adams

From: Mike Abernathy [REDACTED]
Sent: Monday, September 25, 2006 2:26 PM
To: 'Robert Adams'
Subject: RE: license

(b)(6)

Robert,

You have offered to license your technology to our company. You have stated that this technology is useful for "see and avoid applications" for UAVs which is an interesting market arena. We are making a good faith effort to consider your offer. We must know whether this technology has been brought into existence and whether it was ever test flown as a matter of due diligence.

We are not asking these questions out of idle curiosity and we certainly not trying to be difficult – we need this information in order to know the market value of the technology to our users, and there are certain elements of the method that we have concerns about. A flight test report – even if the system was implemented on a model airplane – will almost certainly allay our concerns and we can get on with this. The fact of whether or not this technology has been tested does not require an NDA.

Robert, throughout our dealings I have been honest and responsive to all of your requests, perhaps at peril to our company. I now ask you to please reciprocate my efforts in a small way and provide the requested information so that we may consider your offer of license.

Mike Abernathy

Rapid Imaging Software, Inc.

From: Robert Adams [mailto: [REDACTED]]
Sent: Monday, September 25, 2006 2:49 PM
To: 'Mike Abernathy'
Subject: RE: license

(b)(6)

Mike,

Neither the company nor I are in any way anxious in signing any more licensees's as we have many already, but as you know we must protect our patents in order to preserve said Intellectual Property.

As to your questions, they do not relate to a license and/or a licensee. Our Intellectual Property has been tested in court and is proven solid by far such standards the Federal Court including the Federal Appeals Court. In addition, as to matters of disclosure, all such development at OTG and by our licensee is covered by NDA's.

Should you wish to challenge such, then I advise you to seek proper legal counseling as we are not an attorney nor will ours advice you on such a matters.

Your company has clearly infringed and OTG must protect itself against such matters just as your company would do if in the same position.

Robert Adams

From: Mike Abernathy [mailto: [REDACTED]]
Sent: Monday, September 25, 2006 1:29 PM
To: 'Robert Adams'
Subject: license

(b)(6)

Dear Robert,

Please tell the legal team thanks for getting back to us right away – we appreciate it.

Appendix Volume 2 - A31

00072

You have asked us to consider licensing and this we are now doing. In the interest of due diligence as a prospective licensor of your technology, we ask that you provide us with the following information about the subject invention:

Was this invention ever constructed? If so when, where, and how?

Was this invention ever flight tested? Please provide us with the name of the Pilot in Command, the responsible Flight Test Engineer, the model and block number of the vehicle and GCS, and the range or location at which such testing might have taken place. Also, indicate the dates of such testing. If flight test reports are available please provide them to us, as well.


I know that you are anxious for us to consider your license offer, please provide us with this information.

Mike Abernathy

Rapid Imaging Software, Inc.

latest from Optima

From: Mike Abernathy [redacted] (b)(6)
To: FEIN, EDWARD K. (JSC-HA) (NASA) [redacted] Kennedy, Alan J. (HQ-MC000) [redacted]
Date: Sep 25 2006 - 3:08pm

 image002.gif - 6.9k - [View in Outlook](#)

Ed,

This has not blown over. We would rather lose our company than see NASA hurt by this. Ed, it appears that RIS situation is hopeless. They know that we did not infringe, yet they continue because they know that we lack the funds to fight them. Our situation appears hopeless but we cannot accept a license for technology that we know is dangerous to the public, so I cannot accept this deal that they have offered.

Let us know what you think as soon as possible.

Mike Abernathy

Rapid Imaging Software, Inc.

From: Robert Adams [redacted] (b)(6)

00073

Sent: Monday, September 25, 2006 12:26 PM

To: 'Mike Abernathy'

Subject: Privileged and Confidential Settlement Communications Protected Under Rule 408 of the Federal Rules of Evidence

Privileged and Confidential Settlement Communications Protected

Under Rule 408 of the Federal Rules of Evidence

Mike,

My legal team has read your response and it is a personal shame since you would rather cut and run verse facing the facts and take a license for past and future business, as I am sure it would be substantially less then litigation.

As you have been made aware in our prior communications, among other inventions, the Patents protect a number of features that are implemented in products capable of flying any and all UAV's (1.3) remotely and/or using Synthetic Vision and/or using a synthetic environment.

1.1 "Patent Portfolio" shall mean the portfolio consisting of United States Patent Numbers 5,904,724 (Method and Apparatus for Remotely Piloting an Aircraft), 5,566,073 (Pilot Aid Using a Synthetic Environment), and those future United States patents that may be added in accordance with the covenants and warranties.

1.2 "RPV" shall mean "remotely piloted vehicle." A "remotely piloted aircraft" is an RPV. "UAV" shall mean "unmanned aerial vehicle." RPV is an older term for UAV. "UCAV" shall mean "Unmanned Combat Aerial Vehicle." UCAV is also sometimes defined as an "Uninhabited Combat Aerial Vehicle." UCAV is a UAV that is intended for use in combat. UCAS means "Unmanned Combat Air System."

1.3 "Synthetic Vision" is the current term for "Synthetic Environment" and is the three dimensional projected image data presented to the pilot or other observer.

Of the ten companies responsible for the establishment of UAV Specifications or standard, eight of those companies sell UAV-Devices under brands they control, and each of those companies, i.e., Boeing Aerospace; Lockheed; Nakamichi Corporation; General Atomics Corporation; L-3 and Jacor Corporation; Raytheon; and Geneva Aerospace, pay Optima running royalties for the above referenced patents.

The substantial terms and conditions of our licensing Agreement: i) resulted from negotiations with the market leading manufacturers of UAV's; ii) are subject to most favored nation clauses; and iii) are, therefore, not negotiable.

The Agreement i) is exceedingly fair; ii) does not obligate Infringer to anything more than an industry accepted reasonable royalty for the Patents; iii) does not obligate Infringer to anything more than an industry accepted reasonable terms; and iv) may be canceled by Infringer at any time.

Mike, there is no reason to permit Infringer (Your company) to further drag on the execution of said Agreement based on the facts present on the infringement matter.

Infringer must appreciate that the Patents cover a range of different inventions required to implement the UAV using Synthetic Vision Specifications; and there exists pending divisions of the Patents having claims that are read on by implementation of the UAV Specifications. Infringer principal competitors have appreciated the exceptional litigation strength and flexibility of my patent portfolio and have decided to accept a license rather than expose themselves to an injunction.

Infringer must appreciate that if litigation between the parties is initiated: i) the matter will immediately become personal for both parties; ii) I do not have to account to any other person; and iii) no license or settlement of any kind will ever be possible under any of my intellectual properties. Infringer's competitors require that Infringer be either licensed or enjoined.

I have resolved myself to this course of action in the event an agreement reached shortly, I firmly believe that enjoining Infringer from selling UAV-Devices will not result in lost royalties; and it is in Optima's long-term interests to make an example of a company that has refused to take a license.

Anyone who is fully knowledgeable of the strength and scope of my patent portfolio, and who appreciates the risk-taking and tenacity that I have demonstrated, would not, in light of the terms being offered, recommend jeopardizing the UAV business Infringer enjoys in the U.S.

1.

I have just returned from business travel, and have not had a chance to look over your communications in detail. Thank you very much for bringing your concerns to our attention. Let me assure you that we will do everything in our power, now and in the future, to avoid infringement of these or any patents. We have already begun another careful analysis of them and will act swiftly upon what we learn, should any problems be found. We have been aware of these patents for some years and have not ever infringed upon them, and will not do so. When we first learned of them, we carefully examined our activities and those of our customers to make sure there was no possible infringement of them. As soon as we learned of it, we also informed the legal departments of our major customers to alert them to the existence of USP 5,904,724, but so far no UAV manufacturers have been seriously interested in offering synthetic vision for their UAV pilot stations.

RIS own admission they knew about '724 will go to show that their infringement was willful, which means treble damages Robert. (They probably found out about it when NASA interviewed Jed about their X-38 project.) We will find out at trial and/or during the discovery phase.

From their web site: <http://www.landform.com/>

SmartCam3D provides unparalleled situation awareness for UAS sensor operators. It fuses video with synthetic vision to create the most powerful situation awareness technology currently available. SmartCam3D is an augmented reality system that has been developed, flight tested, and deployed in the most demanding conditions including combat, and as a result it is highly evolved technology which is in use today around the world. The reason that SmartCam3D is so popular is simple: it makes sensor operators more effective, and reduces the target response time. SmartCam3D is deployed with US Army Shadow UAV, and is at present being integrated to the USAF Predator, as well as the Army Warrior UAS. SmartCam3D is the war fighter's choice for sensor operator situational awareness.

Improving a patented invention by adding something to it (in this case fusing video with synthetic vision) is still

infringement. Indeed, you may be able to patent the improvement. However, you may not practice the improved invention without the permission of the original patent holder. (It also means that the holder of the original patent may not practice your improvement without your permission.)

Since they publicly admit SmartCam3D is being used with US Army Shadow, USAF Predator, and Army Warrior his statement "no UAV manufacturers have been seriously interested in offering synthetic vision for their UAV pilot stations" is obviously false.

Also from their web site:

Software License Changes

RIS, Inc. changed insurance carriers, and effective September 1st, 2006 we updated our Software User License agreement. It now states that "The user is prohibited from using this software to pilot manned or unmanned aircraft." Our licenses have always prohibited use of our software for piloting manned aircraft. As you know, we had hoped that we would find a market for our UAV Glass Cockpit Product line. However, there is simply not sufficient market interest for us to bring such a product to market at this time, so we have decided not to release it. As a small company, we need to focus on our energy on the Sensor Operator and Intelligence Analyst at this time.

He is saying that his product should not be used for the very purpose it being advertised, sold, and used for. Lame. And it doesn't get him off the hook as he is still legally liable.

Since it did not state this until September 1, 2006, he has started to take this seriously, and he is clearly worried thus, he changed the terms to try to reduce the liability. I will have our team use wayback site and pull up the old Software User License agreement prior to Sept 1, 2006 this is when I bet they made all their sales and that is what OTG would be entitled too as well.

Here is a short lesson on infringement for Mike.

From : http://inventors.about.com/library/bl/toc/bl_patent-infringement.htm

Text Box: Infringement can be direct, indirect, or contributory. Anyone who makes, uses, or sells the patented invention is a direct infringer. If a person actively encourages another to make, use, or sell the invention, the person so inducing is liable for indirect infringement. Contributory infringement can be committed by knowingly selling or supplying an item for which the only use is in connection with a patented invention. Good faith or ignorance is no defense for direct infringement, but it can be for indirect or contributory infringement. The remedies for infringement consist of: 1. Injunctive relief,

2. damages (including treble damages for willful infringement),
3. attorneys' fees in some cases, and
4. court costs.

2.

We discovered that the system described in patent pertaining to remotely piloted vehicles USP 5,904,724 contains an entire clause in claim 1 that did not exist in the X38 or other UAVs that we have seen – this is the final paragraph of clause 1 regarding the method for handling delay in the control loop by "adjusting control sensitivity". This simply is not present in any form in any vehicles with which we have experience. Since all claims of this patent include this clause by reference, that patent is not relevant to these vehicles because none of them have this feature.

The clause he is referring to is:

a set of one or more remote flight controls coupled to said computer for inputting said flight control information, wherein said computer is also 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.

Time delays in a control system are unavoidable. Normally, a control system has fixed time delays and the system is designed to operate properly with these time delays. Because of the complexity of a UAV system these time delays may

not be known at the time the system (including the control laws) are designed. These time delays may also change during a mission due to the communications path changing. If the system does not properly deal with these changing time delays it will lead to pilot-induced oscillation and there is a good chance the aircraft will crash.

Anyone designing a UAS that does not adjust for changing time delays is an idiot. I don't think the people making UAVs are idiots. That does not relieve him of contributory infringement. It is likely that these time delays are dealt with as part of the control law system which Abernathy might not be privy to and thus a court order will provide us his insider info.

3.

More important however, is that all UAV control systems with which we are familiar require a device called an autopilot which is not contemplated at all in the subject patent. This device is similar to ones in modern manned aircraft, but it is used to control the aircraft flight in the pitch, heading, and roll axes. On UAVs, the communications delay is not handled by determining the delay and adjusting the control sensitivity as Margolin prescribes. Instead, an autopilot is installed onboard the aircraft where it senses changes in pitch, heading, and roll locally on board the aircraft. The pilot still makes control inputs to fly the airplane, but only via the autopilot on board the aircraft. The autopilot corrects attitude drift instantaneously avoiding the problem of substantial communication delays, and allows the pilot to control the vehicle in a more stable manner.

Most important, the autopilot is absolutely required to deal with the frequent communications outages which occur between the UAV and the ground control segment (This can be anywhere from a second to an hour in length, generally). In the system of Margolin, a communications outage would often result in the loss of the aircraft, because the pilot would be unable to correct attitude drift during communication link loss and the air vehicle would go out of control and could crash. In the last decade of working with UAVs never have I witnessed a flight in which the communication link was not lost at least once during the flight. If the control communication link goes down, no control inputs can be made to the aircraft from the pilot on the ground, but the autopilot keeps the airplane from crashing by flying straight and level or gently banking until the link is restored. The system of Margolin does not recognize the problem of link loss, and fails to offer any solution. The autopilot functionality can be located in various components in the X38 it was in the on board GNC (Guidance Navigation and Control) computer, as I recollect.

The fact that '724 does not explicitly teach an autopilot is irrelevant. Adding an autopilot to '724 is still infringement, just as adding a video overlay is infringement.

There is also the matter of the Doctrine of Equivalence. See attached file patents1.pdf

Consider Column 2, lines 12-18:

The computers in the system allow for several modes of operation. For example, the remote aircraft can be instructed to fly to given coordinates without further input from the remote pilot. It also makes it possible to provide computer assistance to the remote pilot. In this mode, the remote flight control controls absolute pitch and roll angles instead pitch and roll rates which is the normal mode for aircraft.

That legal sounds like a defined autopilot to me and that as we need to show infringement at the Markman hearing..

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There is another on-board component called a SAS or Stability Augmentation System found on most large modern UAVs such as Predator, and which performs additional real-time stabilization to that done by the autopilot. Again, the SAS is not contemplated by the Margolin patent, yet is required to dampen control system oscillations in order to safely operate a UAV in systems that may suffer from communications delays to remote user control inputs. There are many more differences that we found when we first examined it, but as you can see we have never worked with a vehicle upon which your system could have been implemented and safely flown, and therefore we realized that it is impossible for us to have infringed this patent 5,904,724. You may easily independently verify the fact of these profound and fundamental differences from your system by examining the printed published materials regarding UAV control system and NASAs many publications on X-38 control systems.

Again, adding something to '724 is still infringement.

As far as examining the control systems on NASA's X-38 project is concerned, in a telephone conversation with NASA's Alan Kennedy in the Office of the General Counsel on February 9, 2006, he repeated his claim that, "The X-38 does fly." NASA has a video of the X-38 (flying) on its web site. (See <http://www.dfrc.nasa.gov/Gallery/Movie/X-38/HTML/EM-0038->

01.html)

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We have never allowed our software to be used as an aid in piloting manned aircraft and thus cannot have infringed 5,566,073. If you aware of anyone doing this with our software, kindly inform us immediately, and we will ask them to desist.

We still have him on infringing on '724.

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From: Mike Abernathy [REDACTED]
Sent: Monday, September 25, 2006 9:08 AM
To: 'Robert Adams'
Subject: question

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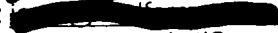
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Cc: 
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[REDACTED]) - (b)(6)
[REDACTED]

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[REDACTED]

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Robert Adams, CEO
Optima Technology Group

RA/cp

-enclosure links-

FW: question

(b)(6)

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To: DELGADO FRANCISCO J. (FRANK) <[REDACTED]>, 'Fein, Edward K. (JSC-AL)' <[REDACTED]>, 'Kennedy, Alan J. (HQ-MC000)' <[REDACTED]>
Date: Sep 25 2006 - 11:44am

One more FYI.

(b)(6)

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Cc: [REDACTED]
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September 19, 2006

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[REDACTED]
[REDACTED]

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RA/cp

-enclosure links-

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From: Fein, Edward K. (JSC-AL) [redacted]
To: Mike Abernathy [redacted], DELGADO FRANCISCO J. (FRANK) [redacted]
CC: Kennedy, Alan J. (HQ-MC000) [redacted]
Date: Sep 25 2006 - 10:38am

Thanks, Mike.

(b) (6)

-Ed

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Sent: Monday, September 25, 2006 10:32 AM
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We discovered that the system described in the patent pertaining to remotely piloted vehicles USP 5,904,724 contains an entire clause in claim 1 that did not exist in the X38 or other UAVs that we have seen – this is the final paragraph of clause 1 regarding the method for handling delay in the control loop by “adjusting control sensitivity”. This simply is not present in any form in any vehicles with which we have experience. Since all claims of this patent include this clause by reference, that patent is not relevant to these vehicles because none of them have this feature.

More important however, is that all UAV control systems with which we are familiar require a device called an autopilot which is not contemplated at all in the subject patent. This device is similar to ones in modern manned aircraft, but it is used to control the aircraft flight in the pitch, heading, and roll axes. On UAVs, the communications delay is not handled by determining the delay and adjusting the control sensitivity as Margolin prescribes. Instead, an autopilot is installed onboard the aircraft where it senses changes in pitch, heading, and roll locally on board the aircraft. The pilot still makes control inputs to fly the airplane, but only via the autopilot on board the aircraft. The autopilot corrects attitude drift instantaneously avoiding the problem of substantial communication delays, and allows the pilot to control the vehicle in a more stable manner.

Most important, the autopilot is absolutely required to deal with the frequent communications outages which occur between the UAV and the ground control segment (This can be anywhere from a second to an hour in length, generally). In the system of Margolin, a communications outage would often result in the loss of the aircraft, because the pilot would be unable to correct attitude drift during communication link loss and the air vehicle would go out of control and could crash. In the last decade of working with UAVs never have I witnessed a flight in which the communication link was not lost at least once during the flight. If the control communication link goes down, no control inputs can be made to the aircraft from the pilot on the ground, but the autopilot keeps the airplane from crashing by flying straight and level or gently banking until the link is restored. The system of Margolin does not recognize the problem of link loss, and fails to offer any solution. The autopilot functionality can be located in various components in the X38 it was in the on board GNC (Guidance Navigation and Control) computer, as I recollect.

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differences that we found when we first examined it, but as you can see we have never worked with a vehicle upon which your system could have been implemented and safely flown, and therefore we realized that it is impossible for us to have infringed this patent 5,904,724. You may easily independently verify the fact of these profound and fundamental differences from your system by examining the printed published materials regarding UAV control system and NASAs many publications on X-38 control systems.

We have never allowed our software to be used as an aid in piloting manned aircraft and thus cannot have infringed 5,566,073. If you aware of anyone doing this with our software, kindly inform us immediately, and we will ask them to desist.

Finally, let me set your mind at ease by informing you that our software product license currently explicitly contains the following clause: "The user is prohibited from using this software to pilot manned or unmanned aircraft." Alas, the requirements of our current company insurance policy, combined with the profound lack of a market for this possible application of our technology facilitated this business decision. Your letter said we recognize the "value" of this technology, but in view of the current situation "lack of value" is probably more appropriate.

We will get back to you just as soon as we have had a chance to study these patent claims further. For now, is there anything else that our company can reasonably do in regard to the concern that you expressed?

Sincerely,

Mike Abernathy

Rapid Imaging Software, Inc.

From: Robert Adams [mailto:robert.adams@rapidimaging.com] (b)(6)  
Sent: Tuesday, September 19, 2006 7:53 AM  
To: [redacted]  
Cc: [redacted]  
Subject: [Norton AntiSpam] Rapid Imaging Software, Inc. patent infringement

It has come to our attention that your company provides Synthetic Vision to fly UAV both in real time and in simulation.

September 19, 2006

Michael F. Abernathy

Rapid Imaging Software, Inc.

[REDACTED] (b)(6)

Sent via US MAIL, FAX & EMAIL

Mr. Abernathy,

It has come to our attention that your company provides Synthetic Vision to fly UAV both in real time and in simulation.

I am sure that Mr. Francisco Delgado of NASA and your other clients would agree with your company having a proper license of our intellectual property.

Hence as a legal formality, we are inviting your company to license our technology seeing that your company is already commercially using and selling said technology as covered by our IP listed below:

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We are pleased that you recognize the value of using Synthetic Vision to allow UAV's to See-and-Avoid other aircraft; this is covered by our patents as noted above.

Please contact us so that we can a proper legal license with our attorneys for your use of our technology and/or you may contact our attorneys (HYPERLINK [REDACTED])

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] law

[REDACTED] to arrange a proper license of said intellectual property. You have 15 days to do so.

[REDACTED] (b)(6)

Sincerely,

Robert Adams, CEO

Optima Technology Group

RA/cp

-enclosure links-

(b)(6)

**RE: Rapid Imaging Software, Inc. patent infringement**

From: Fein, Edward K. (JSC-AL) [redacted]  
To: Mike Abernathy [redacted], Delgado, Francisco J. (JSC-ER2)  
[redacted], Kennedy, Alan J. (HQ-MC000) [redacted]  
Date: Sep 25 2006 - 9:59am

Thanks, Mike!

(b)(6)

**RE: Rapid Imaging Software, Inc. patent infringement**

(b)(6)

From: Fein, Edward K. (JSC-AL) [redacted]  
To: Delgado, Francisco J. (JSC-ER2) [redacted], Mike Abernathy  
[redacted], Kennedy, Alan [redacted]  
Date: Sep 25 2006 - 8:55am

(b)(5)

[redacted]

[redacted]

(b)(5)

Edward K. Fein  
Deputy Chief Counsel/  
Intellectual Property Counsel  
NASA Johnson Space Center

[redacted]

(b)(6)

---

From: Delgado, Francisco J. (JSC-ER2)  
Sent: Monday, September 25, 2006 1:12 AM  
To: Mike Abernathy; Fein, Edward K. (JSC-AL)  
Subject: RE: Rapid Imaging Software, Inc. patent infringement

Please work with Mr. Fein on a time to call. I can 'sneak' away from any activity tomorrow to join a conference call.

thanks,

Frank

---

From: Mike Abernathy [mailto:mik@rapidimaging.com] — (b)(6)  
Sent: Sun 9/24/2006 6:38 PM  
To: Fein, Edward K. (JSC-AL); Delgado, Francisco J. (JSC-ER2)  
Subject: Rapid Imaging Software, Inc. patent infringement

Gentlemen,

I strongly believe that these two patents are defective, but more important I feel strongly that NASA and RIS did not infringe either one of them, in spite of these accusations.

I would like to ask for your help urgently since these people are threatening to sue us and since they have falsely accused us of infringement.

I therefore would like to ask both of you to read my letter attached below which has been sent to Mr. Adams, to make sure that I am stating things properly. Would it be possible for me to call you tomorrow on the phone?

Mike Abernathy

Rapid Imaging Software, Inc.

---

From: Mike Abernathy [mailto:mik@rapidimaging.com] — (b)(6)  
Sent: Sunday, September 24, 2006 5:29 PM  
To: 'Robert Adams'  
Subject: RE: [Norton AntiSpam] Rapid Imaging Software, Inc. patent infringement

Dear Mr. Adams,

I have just returned from business travel, and have not had a chance to look over your communications in detail. Thank you very much for bringing your concerns to our attention. Let me assure you that we will do everything in our power, now and in the future, to avoid infringement of these or any patents. We have already begun another careful analysis of them and will act swiftly upon what we learn, should any problems be found. We have been aware of these patents for some years and have not ever infringed upon them, and will not do so. When we first learned of them we carefully examined our activities and those of our customers to make sure there was no possible infringement of them. As soon as we learned of it, we also informed the legal departments of our major customers to alert them to the existence of USP 5,904,724, but so far no UAV manufacturers have been seriously interested in offering synthetic vision for their UAV pilot stations.

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Sincerely,

Mike Abernathy

Rapid Imaging Software, Inc.

\_\_\_\_\_

From: Robert Adams [redacted] } (b) (6)  
 Sent: Tuesday, September 19, 2006 7:53 AM  
 To: [redacted]  
 Cc: [redacted]  
 Subject: [Norton AntiSpam] Rapid Imaging Software, Inc. patent infringement

It has come to our attention that your company provides Synthetic Vision to fly UAV both in real time and in simulation.

\_\_\_\_\_

September 19, 2006

Michael F. Abernathy  
 [redacted] ) (b) (6)  
 [redacted]

[REDACTED] (b)(6)

Sent via US MAIL, FAX & EMAIL

Mr. Abernathy,

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I am sure that Mr. Francisco Delgado of NASA and your other clients would agree with your company having a proper license of our intellectual property.

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[REDACTED]

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Sincerely,

(b)(6)

Robert Adams, CEO  
Optima Technology Group

RA/cp

-enclosure links-

**RE: Rapid Imaging Software, Inc. patent infringement**

From: Delgado, Francisco J. (JSC-ER2) [REDACTED]  
To: Mike Abernathy [REDACTED], Fein, Edward K. (JSC-AL)  
Date: Sep 25 2006 - 1:13am

(b)(6)

Please work with Mr. Fein on a time to call. I can 'sneak' away from any activity tomorrow to join a conference call.

thanks,

Frank

(b)(6)

From: Mike Abernathy [REDACTED]  
Sent: Sun 9/24/2006 6:38 PM  
To: Fein, Edward K. (JSC-AL); Delgado, Francisco J. (JSC-ER2)  
Subject: Rapid Imaging Software, Inc. patent infringement

Gentlemen,

I strongly believe that these two patents are defective, but more important I feel strongly that NASA and RIS did not infringe either one of them, in spite of these accusations.

I would like to ask for your help urgently since these people are threatening to sue us and since they have falsely accused us of infringement.

I therefore would like to ask both of you to read my letter attached below which has been sent to Mr. Adams, to make sure that I am stating things properly. Would it be possible for me to call you tomorrow on the phone?

Mike Abernathy  
Rapid Imaging Software, Inc.

(b)(6)

From: Mike Abernathy [REDACTED]  
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Subject: RE: [Norton AntiSpam] Rapid Imaging Software, Inc. patent infringement

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and in the future, to avoid infringement of these or any patents. We have already begun another careful analysis of them and will act swiftly upon what we learn, should any problems be found. We have been aware of these patents for some years and have not ever infringed upon them, and will not do so. When we first learned of them we carefully examined our activities and those of our customers to make sure there was no possible infringement of them. As soon as we learned of it, we also informed the legal departments of our major customers to alert them to the existence of USP 5,904,724, but so far no UAV manufacturers have been seriously interested in offering synthetic vision for their UAV pilot stations.

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Sincerely,

Mike Abernathy

Rapid Imaging Software, Inc.

\_\_\_\_\_  
From: Robert Adams [REDACTED]  
Sent: Tuesday, September 19, 2006 7:53 AM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: [Norton AntiSpam] Rapid Imaging Software, Inc. patent infringement

(b) (6)

It has come to our attention that your company provides Synthetic Vision to fly UAV both in real time and in simulation.

\_\_\_\_\_  
September 19, 2006

Michael F. Abernathy  
Rapid Imaging Software, Inc.

[REDACTED]  
[REDACTED]

(b) (6)

Sent via US MAIL, FAX & EMAIL

Mr. Abernathy,

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I am sure that Mr. Francisco Delgado of NASA and your other clients would agree with your company having a proper license of our intellectual property.

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[REDACTED]  
[REDACTED]  
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[REDACTED] to arrange a proper license of said intellectual property. You have 15 days to do so.

Sincerely,

(b)(6)

Robert Adams, CEO

Optima Technology Group

RA/cp

-enclosure links-  
---

RE: US Patents 5566073 and 5904724

From: FEIN, EDWARD K. (JSC-HA) (NASA) [REDACTED]  
To: Barry V. Gibbens, LaRC [REDACTED]  
CC: Linda B. Blackburn [REDACTED]  
Date: Sep 01 2004 - 4:33pm

} (b)(6)

00103

Rats! I guess I'd should research things better before I blindly send them out. Btw, the real Bahamas get hurricanes too.

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

From: Barry V. Gibbens, LaRC [REDACTED]  
Sent: Wednesday, September 01, 2004 3:26 PM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Cc: Linda B. Blackburn  
Subject: RE: US Patents 5566073 and 5904724

(b)(6)

Very nice! I went to the Nassau Bay website, and looked under "New Things . . . Check It Out." Three of the highlights were "Storm Preparedness Information," "Hurricane Tracking Chart," and "You Can Now Pay Traffic Fines On Line." Sounds like my kind of place!!!

BG

At 02:44 PM 9/1/2004 -0500, you wrote:

No need to telecommute from the Bahamas, Barry. Nassau Bay is right across the street from JSC! Check out <http://www.nassaubay.com/>. See -- we got it all! And please do pass the word. I'd even risk the wrath of Linda and Kathy to snag one of you guys.

[REDACTED]

(b)(5)

Take care ...

-Ed

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

From: Barry V. Gibbens, LaRC [REDACTED]  
Sent: Wednesday, September 01, 2004 2:21 PM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Subject: RE: US Patents 5566073 and 5904724

(b)(6)

Thanks Ed - I'll pass the word. Just for future reference, if any of us were to apply for the job, how would you feel about tele-commuting from, say, the Bahamas?????

[REDACTED]

(b)(5)

At 12:30 PM 9/1/2004 -0500, you wrote:

[REDACTED]

(b)(5)


Best regards ...

-Ed

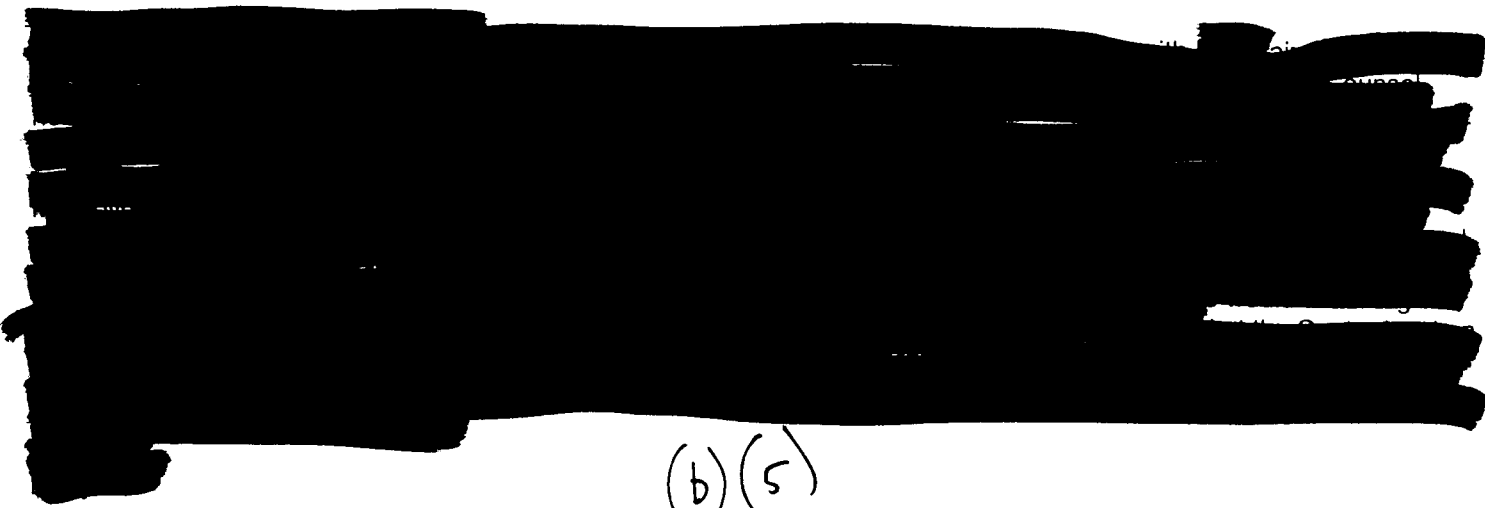
Btw, Jim Cate is retiring at the end of the month, and we definitely will be filling the slot. So please spread the word. Good things about JSC is the high locality pay differential in Houston, and the relatively low cost of living here. The downside is that the poor person will have to deal with my bad a\*\* on a daily basis.

Take care ...

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

From: Barry V. Gibbens, LaRC [mailto:  
Sent: Wednesday, September 01, 2004 11:29 AM  
To: Mike Abernathy; 'Kennedy, Alan'  
Cc: Linda B. Blackburn; Dan Baize; 'Trey Arthur'; DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA); FEIN, EDWARD K. (JSC-HA) (NASA); BOE, ERIC A., LTCOL. (JSC-CB) (NASA)  
Subject: Re: US Patents 5566073 and 5904724

(b)(6)



(b)(5)

At 09:33 AM 9/1/2004 -0600, Mike Abernathy wrote:

Good Morning Alan,

Per our discussions this morning I called both Dan Baize and Barry Gibbens at Langley to discuss the resolution of questions surrounding patents 5566073 and 5904724. When we spoke earlier you indicated that based on the evidence of prior art uncovered so far, that NASA might move for an Ex-Parte re-examination of patent 5566073, provided that NASA patent counsel at LARC concurs. Mr. Baize feels that this patent may be invalid because of copious prior art, and that it is therefore a significant impediment to the development of life-saving synthetic vision technologies. Mr. Gibbens has indicated that he and Ms. Blackwell feel it is now appropriate for NASA LARC to proceed to request a re-examination. We will therefore forward them the same information on prior art that I forwarded to HQ. Please let us know how we can continue to be of help.

Best regards,

Mike Abernathy

Rapid Imaging Software, Inc.

  
[www.landform.com](http://www.landform.com)

(b)(6)

HYPERLINK "<http://www.visualflight.com/>"[www.visualflight.com](http://www.visualflight.com)



Barry V. Gibbens  
NASA Langley Research Center

[REDACTED]  
[REDACTED]

(b)(6)

email: [REDACTED]  
wwwwebsite: <http://tech-transfer.larc.nasa.gov/>

NEW E-MAIL ADDRESS: Please note that effective immediately, my e-mail address is now [REDACTED]  
Please update your mail systems accordingly. Thanks.

(b)(6)

Barry V. Gibbens  
NASA Langley Research Center  
Intellectual Property Law Team - Office of Chief Counsel

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b)(6)

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Barry V. Gibbens  
NASA Langley Research Center

[REDACTED]  
[REDACTED]  
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To: Barry V. Gibbens, LaRC [REDACTED]  
BCC: ROAN, BERNARD J. (JSC-AL) (NASA) [REDACTED]  
Date: Sep 01 2004 - 2:44pm

(b)(6)

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[Redacted]

(b)(5)

Take care ...

~~AAA~~

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Sent: Wednesday, September 01, 2004 2:21 PM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Subject: RE: US Patents 5566073 and 5904724

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[Redacted]

(b)(5)

At 12:30 PM 9/1/2004 -0500, you wrote:

Thanks Barry ...

[Redacted]

(b)(5)

Best regards ...

-Ed

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

From: Barry V. Gibbens, LaRC [Redacted] (b)(6)  
Sent: Wednesday, September 01, 2004 11:29 AM  
To: Mike Abernathy; 'Kennedy, Alan'  
Cc: Linda B. Blackburn; Dan Baize; 'Trey Arthur'; DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA); FEIN, EDWARD K. (JSC-HA) (NASA); BOE, ERIC A., LTCOL. (JSC-CB) (NASA)  
Subject: Re: US Patents 5566073 and 5904724

[Redacted]

(b)(5)

[REDACTED]

(b)(5)

At 09:33 AM 9/1/2004 -0600, Mike Abernathy wrote:

[REDACTED] at

(b)(5)

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.

(b)(6)

[www.landform.com](http://www.landform.com)  
HYPERLINK "<http://www.visualflight.com/>"[www.visualflight.com](http://www.visualflight.com)

Barry V. Gibbens  
NASA Langley Research Center

[REDACTED]

(b)(6)

website: <http://tech-transfer.larc.nasa.gov/>

(b)(6)

NEW E-MAIL ADDRESS: Please note that effective immediately, my e-mail address is now [REDACTED]

Please update your mail systems accordingly. Thanks.

Barry V. Gibbens  
NASA Langley Research Center

[REDACTED]

phone: (757) 864-7141

fax: (757) 864-9190

email: [REDACTED]

wwwwebsite: <http://tech-transfer.larc.nasa.gov/>

(b)(5)

NEW E-MAIL ADDRESS: Please note that effective immediately, my e-mail address is now [REDACTED]  
Please update your mail systems accordingly. Thanks.

**FW: US Patents 5566073 and 5904724**

From: FEIN, EDWARD K. (JSC-HA) (NASA) <[REDACTED]>  
To: RO, THEODORE U., JD (JSC-HA) (NASA) <[REDACTED]>, CATE, JAMES M.,  
JD (JSC-HA) (NASA) <[REDACTED]>  
CC: KRISHEN, KUMAR (JSC-HA) (NASA) <[REDACTED]>, WHITTINGTON,  
JAMES (JSC-HA) (USA) <[REDACTED]>, HAINES, DAVID D. (JSC-HA)  
(NASA) <[REDACTED]>, HIEGER, COLLIN (JSC-HA) (UNK)  
<[REDACTED]>, LANE, HELEN W. (JSC-AD) (NASA) <[REDACTED]>,  
HAYES, GREG W. (JSC-AD) (NASA) <[REDACTED]>, ROAN, BERNARD J. (JSC-  
AL) (NASA) <[REDACTED]>, REMINGTON, DANIEL R. (DAN) (JSC-AL) (NASA)  
<[REDACTED]>

(b)(5)

Date: Sep 01 2004 - 12:51pm

[REDACTED]

(b)(5)

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

From: Mike Abernathy [REDACTED]  
Sent: Wednesday, September 01, 2004 12:25 PM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Subject: RE: US Patents 5566073 and 5904724

Here it is.

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.

(505) 265 7020

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[www.visualflight.com](http://www.visualflight.com)

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

From: FEIN, EDWARD K. (JSC-HA) (NASA) [REDACTED]  
Sent: Wednesday, September 01, 2004 11:19 AM  
To: 'Mike Abernathy'  
Subject: RE: US Patents 5566073 and 5904724

(b)(6)

[REDACTED]

(b)(5)

-Ed

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

From: Mike Abernathy [REDACTED]  
Sent: Wednesday, September 01, 2004 11:45 AM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Cc: DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA)  
Subject: RE: US Patents 5566073 and 5904724  
Hi Ed,

(b)(6)

Happy to keep you involved. I appreciated that article you sent me on the topic. The one thing that concerned me in the article is that I realized if Alan just sends the claims analysis to the PTO without requesting a re-exam then the owner will have the leisure to think up excuses for why this is not so, and prepare a defense maybe even ask for his own re-exam. Yikes! If NASA does not ask for the re-exam upon finding the prior art, we are basically strengthening his position to sue NASA by allowing him the time to synthesize a defense against the defects of his patent. It appears that Barry Gibbens is ready to press forward, happily.

Have I sent you the claims analysis yet?

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.

[REDACTED] (b)(6)

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[www.visualflight.com](http://www.visualflight.com)

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

From: FEIN, EDWARD K. (JSC-HA) (NASA) [REDACTED]  
Sent: Wednesday, September 01, 2004 10:06 AM  
To: 'Mike Abernathy'  
Subject: RE: US Patents 5566073 and 5904724

(b)(6)

[REDACTED]

(b)(5)

-Ed

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

From: Mike Abernathy [REDACTED]  
Sent: Wednesday, September 01, 2004 10:33 AM  
To: 'Kennedy, Alan'  
Cc: 'Barry V. Gibbens, LaRC'; Dan Baize; 'Trey Arthur'; DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA); FEIN, EDWARD K. (JSC-HA) (NASA); BOE, ERIC A., LTCOL. (JSC-CB) (NASA)  
Subject: US Patents 5566073 and 5904724  
Good Morning Alan,

(b)(6)

[REDACTED]

[REDACTED]  
Mike Abernathy  
Rapid Imaging Software, Inc.  
[REDACTED]

(b)(6)

RE: US Patents 5566073 and 5904724

From: Mike Abernathy [REDACTED]  
To: 'FEIN, EDWARD K. (JSC-HA) (NASA)' [REDACTED]  
Date: Sep 01 2004 - 12:44pm

Sir,

Could you read this and let me know what you think of it? I know it will evolve a lot in Barry's hands – which is good. But I would like your thoughts on it for my own and Frank's edification.

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.  
[REDACTED]

[www.landform.com](http://www.landform.com)  
[www.visualflight.com](http://www.visualflight.com)

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

From: FEIN, EDWARD K. (JSC-HA) (NASA) [REDACTED]  
Sent: Wednesday, September 01, 2004 11:41 AM  
To: 'Mike Abernathy'  
Subject: RE: US Patents 5566073 and 5904724

(b)(6)

(b)(5)

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

From: Mike Abernathy [REDACTED]  
Sent: Wednesday, September 01, 2004 12:25 PM  
To: FEIN, EDWARD K. (JSC-HA) (NASA)  
Subject: RE: US Patents 5566073 and 5904724  
Here it is.

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.  
[REDACTED]

[www.landform.com](http://www.landform.com)  
[www.visualflight.com](http://www.visualflight.com)

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

From: FEIN, EDWARD K. (JSC-HA) (NASA) [REDACTED]

Sent: Wednesday, September 01, 2004 11:19 AM

To: 'Mike Abernathy'

Subject: RE: US Patents 5566073 and 5904724

[Redacted]

(b)(5)

-Ed

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

From: Mike Abernathy [Redacted]

(b)(6)

Sent: Wednesday, September 01, 2004 11:45 AM

To: FEIN, EDWARD K. (JSC-HA) (NASA)

Cc: DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA)

Subject: RE: US Patents 5566073 and 5904724

Hi Ed,

Happy to keep you involved. I appreciated that article you sent me on the topic. The one thing that concerned me in the article is that I realized if Alan just sends the claims analysis to the PTO without requesting a re-exam then the owner will have the leisure to think up excuses for why this is not so, and prepare a defense maybe even ask for his own re-exam. Yikes! If NASA does not ask for the re-exam upon finding the prior art, we are basically strengthening his position to sue NASA by allowing him the time to synthesize a defense against the defects of his patent. It appears that Barry Gibbens is ready to press forward, happily.

Have I sent you the claims analysis yet?

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.

(b)(6)

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[www.visualflight.com](http://www.visualflight.com)

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

From: FEIN, EDWARD K. (JSC-HA) (NASA) [Redacted]

(b)(6)

Sent: Wednesday, September 01, 2004 10:06 AM

To: 'Mike Abernathy'

Subject: RE: US Patents 5566073 and 5904724

Thanks, Mike, for keeping me in the loop.

-Ed

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

From: Mike Abernathy [Redacted]

(b)(6)

Sent: Wednesday, September 01, 2004 10:33 AM

To: 'Kennedy, Alan'

Cc: 'Barry V. Gibbens, LaRC'; Dan Baize; 'Trey Arthur'; DELGADO, FRANCISCO J. (FRANK) (JSC-ER2) (NASA); FEIN, EDWARD K. (JSC-HA) (NASA); BOE, ERIC A., LTCOL. (JSC-CB) (NASA)

Subject: US Patents 5566073 and 5904724

Good Morning Alan,

[Redacted]

(b)(5)

Best regards,

Mike Abernathy  
Rapid Imaging Software, Inc.

[Redacted]

(b)(6)

[www.landform.com](http://www.landform.com)  
[www.visualflight.com](http://www.visualflight.com)



Claims Analysis of  
Patent.doc

Re: US Patents 5566073 and 5904724

From: Barry V. Gibbens, LaRC <[Redacted]>  
To: Mike Abernathy <[Redacted]>, 'Kennedy, Alan' <[Redacted]>  
CC: Linda B. Blackburn <[Redacted]>, Dan Baize <[Redacted]>, 'Trey Arthur' <[Redacted]>, DELGADO FRANCISCO J. (FRANK) <[Redacted]>, FEIN, EDWARD K. (JSC-HA) (NASA) <[Redacted]>, Eric Boe <[Redacted]>  
Date: Sep 01 2004 - 11:29am

(b)(6)

Hi Alan (and others),

[Large redacted block]

(b)(5)

Thanks,  
Barry

At 09:33 AM 9/1/2004 -0600, Mike Abernathy wrote:

Good Morning Alan,

[Large redacted block]



(b)(5)

Best regards,

Mike Abernathy

Rapid Imaging Software, Inc.

[Redacted] (b)(6)

[www.landform.com](http://www.landform.com)

HYPERLINK "<http://www.visualflight.com/>"[www.visualflight.com](http://www.visualflight.com)

Barry V. Gibbens  
NASA Langley Research Center

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

(b)(6)

wwwwebsite: <http://tech-transfer.larc.nasa.gov/>

NEW E-MAIL ADDRESS: Please note that effective immediately, my e-mail address is now [Redacted]. Please update your mail systems accordingly. Thanks.

**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Wednesday, August 06, 2008 1:36 PM

To: Fein, Edward K. (JSC-AL)

Cc: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)

Subject: Patent Infringement claim from Jed Margolin; NASA Case No. I-222

(b)(5) [REDACTED]

Thank you,

Jan S. McNutt  
Attorney-Advisor (Commercial)  
Office of the General Counsel  
NASA Headquarters

[REDACTED] (b)(6)

From: McNutt, Jan (HQ-MC000)  
Sent: Monday, August 11, 2008 3:53 PM  
To: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
Subject: FW: NASA FOIA HQ 08-270  
Attachments: jm\_nasa\_foia\_x.pdf

(b)(5)

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

From: Jed Margolin [mailto: ]  
Sent: Friday, August 08, 2008 2:19 PM  
To: McNutt, Jan (HQ-MC000)  
Subject: Re: NASA FOIA HQ 08-270

(b)(6)

Dear Mr. McNutt.

I will agree to the 90 day extension you have requested for NASA to respond to my FOIA Request (HQ 08-270) if NASA acknowledges that my FOIA request is entirely separate from Optima Technology Group's Claim Case No. I-222.

Please see attached letter.

Sincerely yours,

Jed Margolin

[Redacted signature block] (b)(6)

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

From: "McNutt, Jan (HQ-MC000)" <[Redacted]>  
To: "Jed Margolin" <[Redacted]>  
Sent: Wednesday, August 06, 2008 6:44 AM  
Subject: RE: NASA Case I-222

(b)(6)

Dear Mr. Margolin,

Please see the attached. Hard copy to follow.

Jan S. McNutt  
Attorney-Advisor (Commercial)  
Office of the General Counsel  
NASA Headquarters

[Redacted signature block] (b)(6)

[REDACTED]

(b)(6)

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

From: Jed Margolin [REDACTED]  
Sent: Tuesday, August 05, 2008 1:56 PM  
To: McNutt, Jan (HQ-MC000)  
Subject: NASA Case I-222

(b)(6)

Dear Mr. McNutt.

I have attached the documents we discussed.

Regards,

Jed Margolin

Jed Margolin  
[REDACTED]

(b)(5)

[REDACTED]  
August 8, 2008

Mr. Jan S. McNutt  
Office of the General Counsel  
NASA Headquarters  
Washington, DC 20546-0001

Re: FOIA Request (FOIA HQ 08-270) regarding NASA Case No. I-222

Dear Mr. McNutt,

As we discussed in our recent telephone conversations, my FOIA Request is entirely separate from NASA Claim Case I-222. The patents involved in the claim are now owned by Optima Technology Group, Inc. I trust that Optima Technology Group has now provided you with the documentation you requested in order to establish their ownership of the Patents.

I will agree to the 90 day extension you have requested for NASA to respond to my FOIA Request (HQ 08-270) if NASA acknowledges that my FOIA request is entirely separate from Optima Technology Group's Claim Case No. I-222.

Sincerely yours,

*Jed Margolin*

Jed Margolin

[REDACTED]  
From: McNutt, Jan (HQ-MC000)  
Sent: Monday, August 11, 2008 4:39 PM  
To: Rotella, Robert F. (HQ-MA000); Borda, Gary G. (HQ-MC000)  
Subject: RE: NASA FOIA HQ 08-270

[REDACTED]  
[REDACTED]  
[REDACTED] (b)(5)

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

From: Rotella, Robert F. (HQ-MA000)  
Sent: Monday, August 11, 2008 4:12 PM  
To: McNutt, Jan (HQ-MC000); Borda, Gary G. (HQ-MC000)  
Subject: Re: NASA FOIA HQ 08-270

[REDACTED]  
[REDACTED]  
[REDACTED] (b)(5)

This Message was sent from my BlackBerry

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

From: McNutt, Jan (HQ-MC000)  
To: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
Sent: Mon Aug 11 14:53:23 2008  
Subject: FW: NASA FOIA HQ 08-270

[REDACTED]  
[REDACTED]  
[REDACTED] (b)(5)

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

From: Jed Margolin [REDACTED]  
Sent: Friday, August 08, 2008 2:19 PM  
To: McNutt, Jan (HQ-MC000)  
Subject: Re: NASA FOIA HQ 08-270

[REDACTED] (b)(6)

00143

Dear Mr. McNutt.

I will agree to the 90 day extension you have requested for NASA to respond to my FOIA Request (HQ 08-270) if NASA acknowledges that my FOIA request is entirely separate from Optima Technology Group's Claim Case No. I-222.

Please see attached letter.

Sincerely yours,

Jed Margolin

[REDACTED]

(b)(6)

=====

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

From: "McNutt, Jan (HQ-MC000)" [REDACTED]

To: "Jed Margolin" [REDACTED]

Sent: Wednesday, August 06, 2008 6:44 AM

Subject: RE: NASA Case I-222

(b)(6)

Dear Mr. Margolin,

Please see the attached. Hard copy to follow.

Jan S. McNutt  
Attorney-Advisor (Commercial)  
Office of the General Counsel  
NASA Headquarters

[REDACTED]

(b)(6)

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

From: Jed Margolin [REDACTED]

Sent: Tuesday, August 05, 2008 1:56 PM

To: McNutt, Jan (HQ-MC000)

Subject: NASA Case I-222

(b)(6)

Dear Mr. McNutt.

I have attached the documents we discussed.

00104

Regards,

Jed Margolin



[Redacted]

From: McNutt, Jan (HQ-MC000)  
Sent: Monday, August 18, 2008 4:32 PM  
To: Rotella, Robert F. (HQ-MA000)  
Cc: Borda, Gary G. (HQ-MC000)  
Subject: Letter to Optima

[Redacted]

(b)(5)

Jan S. McNutt  
Attorney-Advisor (Commercial)  
Office of the General Counsel  
NASA Headquarters

[Redacted]

(b)(6)

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Optima Letter  
20080817.doc

August 20, 2008

Office of the General Counsel

Dr. Robert Adams, CEO  
Optima Technology Group



(b) (6)

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

Dear Dr Adams:

This is to advise that I have been assigned the responsibility of evaluating the allegation that NASA has infringed U.S. Patent No. 5,904,724, as reflected in the above-identified administrative claim. You have provided me with a copy of an assignment from the inventor, Mr. Jed Margolin. Although this copy, dated 7/20/2004 is not notarized, it is recorded by the Patent and Trademark Office (PTO) with a recordation date of 12/21/2007. There are also four other assignments recorded with the PTO for this same patent, although one seems to be a correction. The recordation dates for three of these assignments precede the assignment recordation date of your claimed assignment, however, the dates of assignment are subsequent to your date of assignment. I have also received independent verification of your claim of ownership verbally (by telephone) from Mr. Margolin. Based on the above, although the verification of ownership appears far from certain based solely on the documentation, it would appear on its face that your claim of ownership of the patent is correct.

Because you are a new claimant, there is information that we will need in order to complete our analysis of the claim. These are:

- 1) The identification of all procurements known to the claimant or patent owner which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.
- 2) A detailed identification of the accused articles or processes, particularly where the article or process relates to a component or subcomponent of the item procured, and an element by element comparison of the representative claims with the accused article or process. If available, this identification

should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

- 3) The names and addresses of all past and present licensees under the patent and copies of all license agreements and releases involving the patent.
- 4) A brief description of all litigation in which the patent has been or is now involved and the present status thereof.
- 5) A list of persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

You should pay particular attention to item (2) which essentially calls for you to prepare what is commonly referred to as a "claim chart" that specifies each and every element of the affected claims and the correspondence on an element-by-element basis with the device that you are alleging that NASA has infringed.

Sincerely,

Jan S. McNutt  
Attorney-Advisor

**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Tuesday, August 26, 2008 8:09 AM  
**To:** Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Subject:** FW: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

**Attachments:** [Redacted]

(b)(5)

**From:** Robert Adams-OTG [Redacted]  
**Sent:** Monday, August 25, 2008 6:48 PM  
**To:** McNutt, Jan (HQ-MC000); [Redacted]  
**Subject:** Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

(b)(6)

Sent via U.S. Mail with tracking number

Jan S. McNutt,

Please see the attached letter; it is your response to your most recent letter.

Thank you,

Dr. Robert Adams – CEO  
Optima Technology Group

(b)(6)

Simply Smarter, Encryption & Aerospace Solutions since 1990! The information contained in this e-mail and any attachments are legally privileged and confidential. If you are not an intended recipient, you are hereby notified that any dissemination, any and all distribution or copying of this e-mail is strictly prohibited without the prior consent of Optima Technology Group (sender). If you have received this e-mail in error, please notify the sender and permanently delete the e-mail and any attachments immediately. You should not retain, copy or use this e-mail or any attachment for any purpose, nor disclose all or any part of the contents to any other person. Thank you.

00103

[REDACTED]  
**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Friday, October 03, 2008 9:13 AM  
**To:** Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Subject:** FW: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

(b)(5)

**From:** Robert Adams-OTG [REDACTED] (b)(6)  
**Sent:** Friday, October 03, 2008 8:18 AM  
**To:** McNutt, Jan (HQ-MC000)  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

Mr. McNutt,

Our company provided you're everything that had been requested by your counsel as all of that is legal and current, for you to say otherwise is nothing more than an attempt to delay the process and shall be brought up latter to the judge should this matter go to court.

Dr. Adams

**From:** McNutt, Jan (HQ-MC000) [REDACTED] (b)(6)  
**Sent:** Wednesday, October 01, 2008 7:58 AM  
**To:** Robert Adams-OTG  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

Dear Mr. Adams,

Thank you for your email and offer of settlement. At the moment the Administration is still reviewing the claim and it is, therefore, premature for any settlement talks. We trust that you have forwarded our letter of August 20, 2008 to your attorney Mr. Larry Oliverio and anticipate that he will be responding to the more detailed and also more current information we requested in that letter.

Regards,

Jan S. McNutt  
Senior Attorney (Commercial)  
Office of the General Counsel  
NASA Headquarters

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
(b)(6)

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From: McNutt, Jan (HQ-MC000)  
Sent: Monday, October 06, 2008 11:18 AM  
To: Rotella, Robert F. (HQ-MA000)  
Cc: Borda, Gary G. (HQ-MC000)  
Subject: FW: Optima Technology Group - Margolin Patents

(b)(5)

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

From: krukarak@olpatentlaw.com [mailto: ]  
Sent: Friday, October 03, 2008 5:13 PM  
To: Mike Abernathy  
Cc: McNutt, Jan (HQ-MC000);  
Subject: RE: Optima Technology Group - Margolin Patents

(b)(5)

Hi Jan,

Richard Krukar, the guy that prepped the reexam request here.

Another issue we found is that Rapid Imaging Software (RIS) is not infringing either directly or indirectly.

...richard

On Fri, October 3, 2008 2:48 pm, Mike Abernathy wrote:

> Privileged and Confidential

>  
>  
>  
>  
>

> Dear Jan,

>  
>  
>  
>

> We will of course be happy to help however possible. Our company  
> prepared a request for re-examination of these patents based on prior art  
> and would have used it had OTG not gone away.

>  
>  
>

> These patents are defective because the invention is both obvious and  
> non-novel as evidenced by numerous printed published works. (We can  
> provide these references if needed). Ironically, they claim patent on  
> work already published by NASA over a decade earlier.

>  
>  
>

> The attached NASA technical publication by Shahan Serrafian, Simulator  
> Evaluation of a Remotely Piloted Vehicle Lateral Landing Task Using a  
> Visual

> Display, dates from 1984 and fully anticipates both Margolin patents, and  
> is referenced by neither one.

>  
>  
>  
> [http://en.wikipedia.org/wiki/Highly Manueverable Aircraft Technology](http://en.wikipedia.org/wiki/Highly_Maneuverable_Aircraft_Technology)

>  
>  
> In other words, OTG is attempting force NASA to pay for a patent  
> infringement on something that NASA in fact invented and published more  
> than a decade prior to the patent filing.

>  
>  
> Would Wednesday at 10AM MT be convenient for you?

> Mike Abernathy

> Rapid Imaging Software, Inc.

> [REDACTED]  
> [REDACTED] (b)(6)  
> [REDACTED]

> [www.landform.com](http://www.landform.com)

> From: McNutt, Jan (HQ-MC000) [mailto:[REDACTED]] (b)(6)  
> Sent: Friday, October 03, 2008 1:37 PM  
> To: [REDACTED]  
> Subject: Optima Technology Group - Margolin Patents

> [REDACTED] hy, (b)(5)  
> [REDACTED]  
> [REDACTED]  
> [REDACTED]  
> [REDACTED]  
> [REDACTED]

> Regards,

>

>

> Jan S. McNutt

> Senior Attorney (Commercial)

> Office of the General Counsel

> NASA Headquarters

> [REDACTED]

> [REDACTED]

> [REDACTED]

> [REDACTED]

> [REDACTED]

>

>

>

(b)(6)



[REDACTED]  
**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Monday, October 06, 2008 11:18 AM  
**To:** Rotella, Robert F. (HQ-MA000)  
**Cc:** Borda, Gary G. (HQ-MC000)  
**Subject:** FW: Optima Technology Group - Margolin Patents

[REDACTED] (b) (5)

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**From:** Benjamin W. Allison [REDACTED] (b) (6)  
**Sent:** Friday, October 03, 2008 5:46 PM  
**To:** Mike Abernathy; McNutt, Jan (HQ-MC000)  
**Cc:** krukar@olpatentlaw.com  
**Subject:** RE: Optima Technology Group - Margolin Patents

Jan,  
We're assisting RIS in the Optima matter as well, and I would like to participate in the call Wednesday. Let me know call-in information when you can.

Regards,  
Ben

Benjamin Allison  
Sutin Thayer & Browne PC

[REDACTED] (b) (6)

---

**From:** Mike Abernathy [REDACTED] (b) (6)  
**Sent:** Friday, October 03, 2008 2:49 PM  
**To:** 'McNutt, Jan (HQ-MC000)'  
**Cc:** Benjamin W. Allison; krukar@olpatentlaw.com  
**Subject:** RE: Optima Technology Group - Margolin Patents

Privileged and Confidential

Dear Jan,  
We will of course be happy to help however possible. Our company prepared a request for re-examination of these patents based on prior art and would have used it had OTG not gone away.  
These patents are defective because the invention is both obvious and non-novel as evidenced by numerous printed published works. (We can provide these references if needed). Ironically, they claim patent on work already published by NASA over a decade earlier.

The attached NASA technical publication by Shahan Serrafian, *Simulator Evaluation of a Remotely Piloted Vehicle Lateral Landing Task Using a Visual Display*, dates from 1984 and fully anticipates both Margolin patents, and is referenced by neither one.

[http://en.wikipedia.org/wiki/Highly\\_Maneuverable\\_Aircraft\\_Technology](http://en.wikipedia.org/wiki/Highly_Maneuverable_Aircraft_Technology)

In other words, OTG is attempting force NASA to pay for a patent infringement on something that NASA in fact invented and published more than a decade prior to the patent filing.

Would Wednesday at 10AM MT be convenient for you?

Mike Abernathy  
Rapid Imaging Software, Inc.

[REDACTED] (b)(6)  
[REDACTED]  
[www.landform.com](http://www.landform.com)

**From:** McNutt, Jan (HQ-MC000) [REDACTED] (b)(6)  
**Sent:** Friday, October 03, 2008 1:37 PM  
**To:** mikea@landform.com  
**Subject:** Optima Technology Group - Margolin Patents

Dear Mr. Abernathy,

[REDACTED]

Regards,

(b)(5)

Jan S. McNutt  
Senior Attorney (Commercial)  
Office of the General Counsel  
NASA Headquarters

[REDACTED] (b)(6)  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Monday, October 06, 2008 11:19 AM  
**To:** Rotella, Robert F. (HQ-MA000); Fein, Edward K. (JSC-AL)  
**Cc:** Borda, Gary G. (HQ-MC000)  
**Subject:** FW: Optima Technology Group - Margolin Patents  
**Attachments:** HiMAT Claims Analysis of Patent 5904724.doc; HIMAT\_Kempel\_1988\_0006558\_1989006558.pdf

[REDACTED] (b)(5)

**From:** Mike Abernathy [REDACTED]  
**Sent:** Saturday, October 04, 2008 7:08 PM  
**To:** McNutt, Jan (HQ-MC000)  
**Cc:** [REDACTED]  
**Subject:** patent

(b)(6)

Privileged and confidential

Hi Jan,

Richard is quite correct to point out that we did not infringe. Our software license in fact prohibits this use of our software.

I have attached a claims chart regarding NASA research fully anticipating the patent, to help you become familiar with the patent in question. Please keep this information confidential for now.

Mike Abernathy  
Rapid Imaging Software, Inc.

[REDACTED] (b)(6)

[www.landform.com](http://www.landform.com)

**From:** McNutt, Jan (HQ-MC000) [REDACTED]  
**Sent:** Friday, October 03, 2008 1:37 PM  
**To:** mikea@landform.com  
**Subject:** Optima Technology Group - Margolin Patents

(b)(6)

[REDACTED]

Regards,

(b)(5)

Jan S. McNutt  
Senior Attorney (Commercial)

Office of the General Counsel  
NASA Headquarters

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) (6)

[REDACTED]  
**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Wednesday, October 08, 2008 1:55 PM  
**To:** Benjamin W. Allison; McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Cc:** Mike Abernathy; [REDACTED]; Geraldine M. Romero; Borda, Gary G. (HQ-MC000)  
**Subject:** RE: Optima (b)(6)

Thanks, all ... It was indeed a productive telecon.

-Ed

Edward K. Fein  
Intellectual Property Counsel  
NASA Johnson Space Center  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b)(6)

---

**From:** Benjamin W. Allison [REDACTED] (b)(6)  
**Sent:** Wednesday, October 08, 2008 12:28 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Fein, Edward K. (JSC-AL)  
**Cc:** Mike Abernathy; [REDACTED]; Geraldine M. Romero  
**Subject:** Optima

Jan, Bob, and Ed,

It was a pleasure talking this morning. Attached is a copy of our response on behalf of RIS to Optima's demand letter, as we discussed. Mike will be contacting you shortly and providing our reexam materials. Let us know if we can help in any other way.

Regards,

Ben

Benjamin Allison  
Sutin Thayer & Browne PC  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b)(6)

**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Wednesday, October 08, 2008 1:56 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Cc:** Borda, Gary G. (HQ-MC000)  
**Subject:** RE: Optima

See: <http://www.sutinfirm.com/>

---

**From:** Benjamin W. Allison [REDACTED] (b)(6)  
**Sent:** Wednesday, October 08, 2008 12:28 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Fein, Edward K. (JSC-AL)  
**Cc:** Mike Abernathy; [REDACTED]; Geraldine M. Romero  
**Subject:** Optima (b)(6)

Jan, Bob, and Ed,

It was a pleasure talking this morning. Attached is a copy of our response on behalf of RIS to Optima's demand letter, as we discussed. Mike will be contacting you shortly and providing our reexam materials. Let us know if we can help in any other way.

Regards,

Ben

Benjamin Allison  
Sutin Thayer & Browne PC

[REDACTED] (b)(6)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

---

**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Wednesday, October 08, 2008 2:11 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Cc:** Borda, Gary G. (HQ-MC000)  
**Subject:** RE: Optima

and: <http://www.olpatentlaw.com/>

---

**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Wednesday, October 08, 2008 12:56 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Cc:** Borda, Gary G. (HQ-MC000)  
**Subject:** RE: Optima

See: <http://www.sutinfirm.com/>

---

**From:** Benjamin W. Allison [REDACTED]  
**Sent:** Wednesday, October 08, 2008 12:28 PM  
**To:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Fein, Edward K. (JSC-AL)  
**Cc:** Mike Abernathy; [REDACTED]; Geraldine M. Romero  
**Subject:** Optima

Jan, Bob, and Ed,

It was a pleasure talking this morning. Attached is a copy of our response on behalf of RIS to Optima's demand letter, as we discussed. Mike will be contacting you shortly and providing our reexam materials. Let us know if we can help in any other way.

Regards,

Ben

Benjamin Allison  
Sutin Thayer & Browne PC

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** Galus, Helen M. (LARC-B2)  
**Sent:** Friday, October 17, 2008 10:22 AM  
**To:** Borda, Gary G. (HQ-MC000)  
**Subject:** FW: File wrapper for 5,904,724  
**Attachments:** PAT-00016 Margolin - 5,904,724 - A (L0062064).PDF; PAT-00016 Margolin - 5,904,724 - B (L0062065).PDF; PAT-00016 Margolin - 5,904,724 - C (L0062079).PDF; PAT-00016 Margolin - 5,904,724 - D (L0062080).PDF; PAT-00016 Margolin - 5,904,724 - E (L0062081).PDF; PAT-00016 Margolin - 5,904,724 - E1 (L0062083).PDF; PAT-00016 Margolin - 5,904,724 - F (L0062084).PDF; PAT-00016 Margolin - 5,904,724 - G (L0062085).PDF; PAT-00016 Margolin - 5,904,724 - G2 (L0062086).PDF

[REDACTED]

(b)(5)

**From:** Galus, Helen M. (LARC-B2)  
**Sent:** Friday, October 17, 2008 10:00 AM  
**To:** Rotella, Robert F. (HQ-MA000); Homer, Mark W. (JPL-0910); Fein, Edward K. (JSC-AL)  
**Cc:** Blackburn, Linda B. (LARC-B2); Galus, Helen M. (LARC-B2)  
**Subject:** FW: File wrapper for 5,904,724

[REDACTED]

(b)(5)

Helen M. Galus  
Patent Attorney  
Office of Chief Counsel  
NASA Langley Research Center

[REDACTED] (b)(6)

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(b)  
(S)

[REDACTED]

Gary G. Borda  
Agency Counsel for Intellectual Property  
Office of the General Counsel  
NASA Headquarters

[REDACTED]  
Phone: [REDACTED]  
Cell: [REDACTED]  
Fax: [REDACTED]

(b)(6)

\*\*\*\*\*

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This communication should only be used for the particular matter discussed herein. Changes in circumstances and changes in law can greatly alter any current legal advice.

\*\*\*\*\*

The folks pressing forward with this claim do not have solid ground to stand on (IMHO). Based on the previous research performed, I do not see how their patent claims are valid and I would like to request that NASA's council take this matter seriously and get the patents invalidated (as it should have been done when this first showed up a couple of years ago). This is not only the right legal thing to do, but also the right moral thing to do. If we allow an individual to continue to harass small companies and stand-by with little/no action, then we are no better than the company doing the harassing. As a government organization, we need to keep the public faith and trust and again, "do the right thing." I realize that patience is important in legal matter, but believe that the time for sitting idle and hoping that this matter goes away is way past due and that something needs to be done ASAP. Putting companies that NASA relies on to help move technology forward out of business with a barrage of unwarranted litigation does not seem like it is in NASA's (or our taxpayers) best interest.

Please let me know what I need to do on my end to help move this along.

BTW: If we do not deal with issue immediately it will only get worse for NASA. I know of several Projects within JSC, JPL, and Langley that use independently developed technology (i.e. technology that does not use what RIS and I came up with) that I am sure Mr. Adams and company would claim infringes on their "Patents." We seem to be on his radar at the moment because we do what government organizations are encouraged to do ("Publish their work").

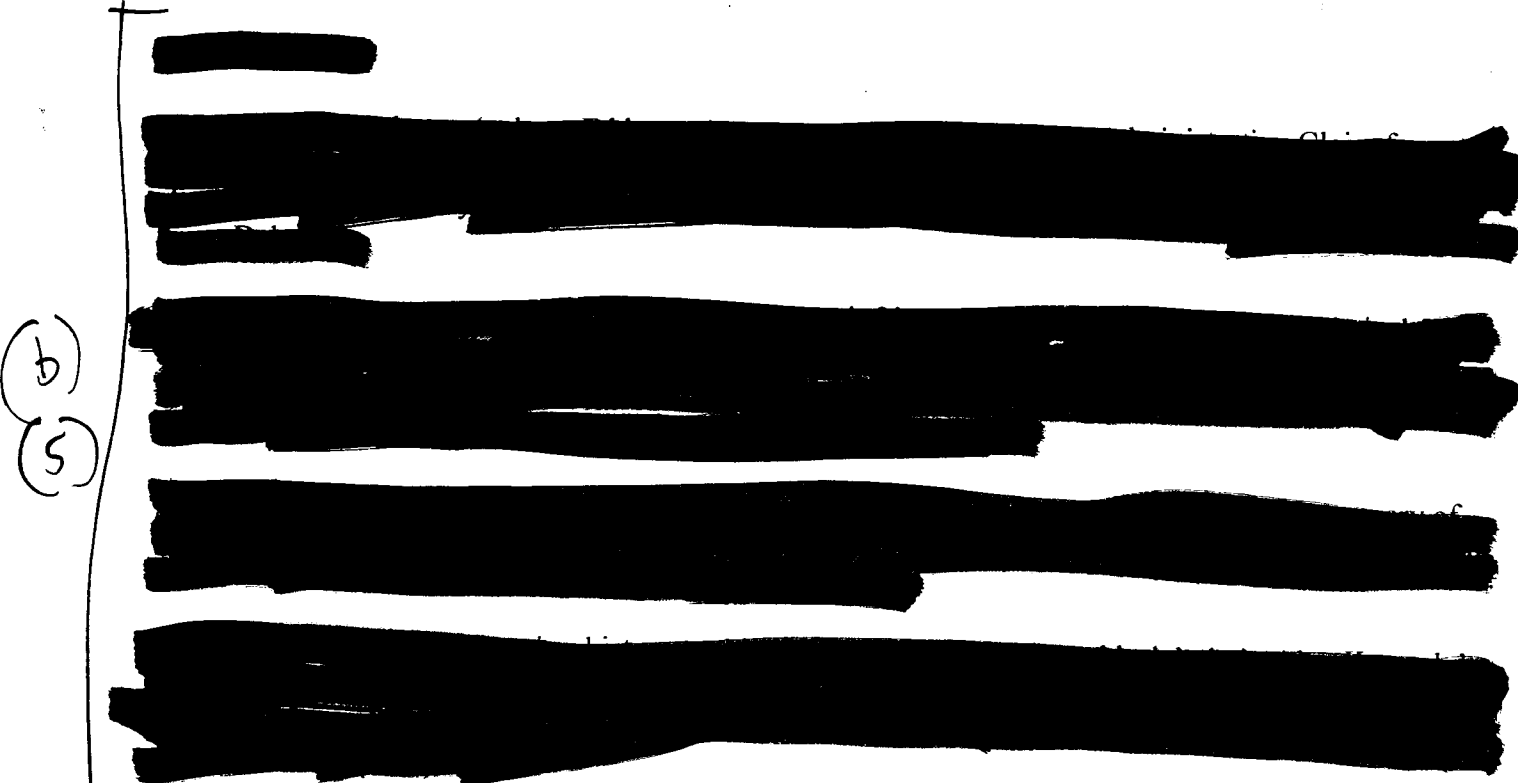
Thank You,

Frank Delgado

---

**From:** Borda, Gary G. (HQ-MC000)  
**Sent:** Thursday, October 16, 2008 11:42 AM  
**To:** Fein, Edward K. (JSC-AL); Homer, Mark W. (JPL-0910)  
**Cc:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Samuels, David A. (DFRC-L)  
**Subject:** Admin Claim for Patent Infringement - Optima Technology Group  
**Importance:** High

(b)  
(5)



[REDACTED]  
**From:** Homer, Mark W. (JPL-0910)  
**Sent:** Thursday, October 16, 2008 1:39 PM  
**To:** Borda, Gary G. (HQ-MC000)  
**Subject:** FW: Admin Claim for Patent Infringement - Optima Technology Group

[REDACTED]  
[REDACTED]  
[REDACTED]  
(b)(5)

---

**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Thursday, October 16, 2008 10:20 AM  
**To:** Borda, Gary G. (HQ-MC000); Homer, Mark W. (JPL-0910)  
**Cc:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Samuels, David A. (DFRC-L)  
**Subject:** RE: Admin Claim for Patent Infringement - Optima Technology Group

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
(b)(5)

**From:** Delgado, Francisco J. (JSC-ER2) [REDACTED] — (b)(6)  
**Sent:** Monday, September 25, 2006 9:42 PM  
**To:** Mike Abernathy; Fein, Edward K. (JSC-AL); Kennedy, Alan J. (HQ-MC000); [REDACTED]  
**Cc:** Delgado, Francisco J. (JSC-ER2); Fredrickson, Steven E. (JSC-ER)  
**Subject:** FW: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

See email from "Mr. Adams" below.

This is getting more ridiculous by the minute. I have resisted replying in any form as suggested by JSC council. However, this matter has been left open for quite some time and something needs to be done NOW. It has come to my attention that Mr. Adams and company have issued a letter that prohibits RIS from selling any of their software until this issue is resolved. We have had a very "intellectually" fruitful relationship with RIS for almost a decade and would like to continue this relationship for many years to come. Some of the technology concepts in question were co-developed by RIS and I during many "brainstorming sessions" on how to provide optimal situation awareness to various users.

NASA Headquarters



(b)(6)

\*\*\*\*\*

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\*\*\*\*\*

within JSC, JPL, and Langley that use independently developed technology (i.e. technology that does not use what RIS and I came up with) that I am sure Mr. Adams and company would claim infringes on their "Patents." We seem to be on his radar at the moment because we do what government organizations are encouraged to do ("Publish their work").

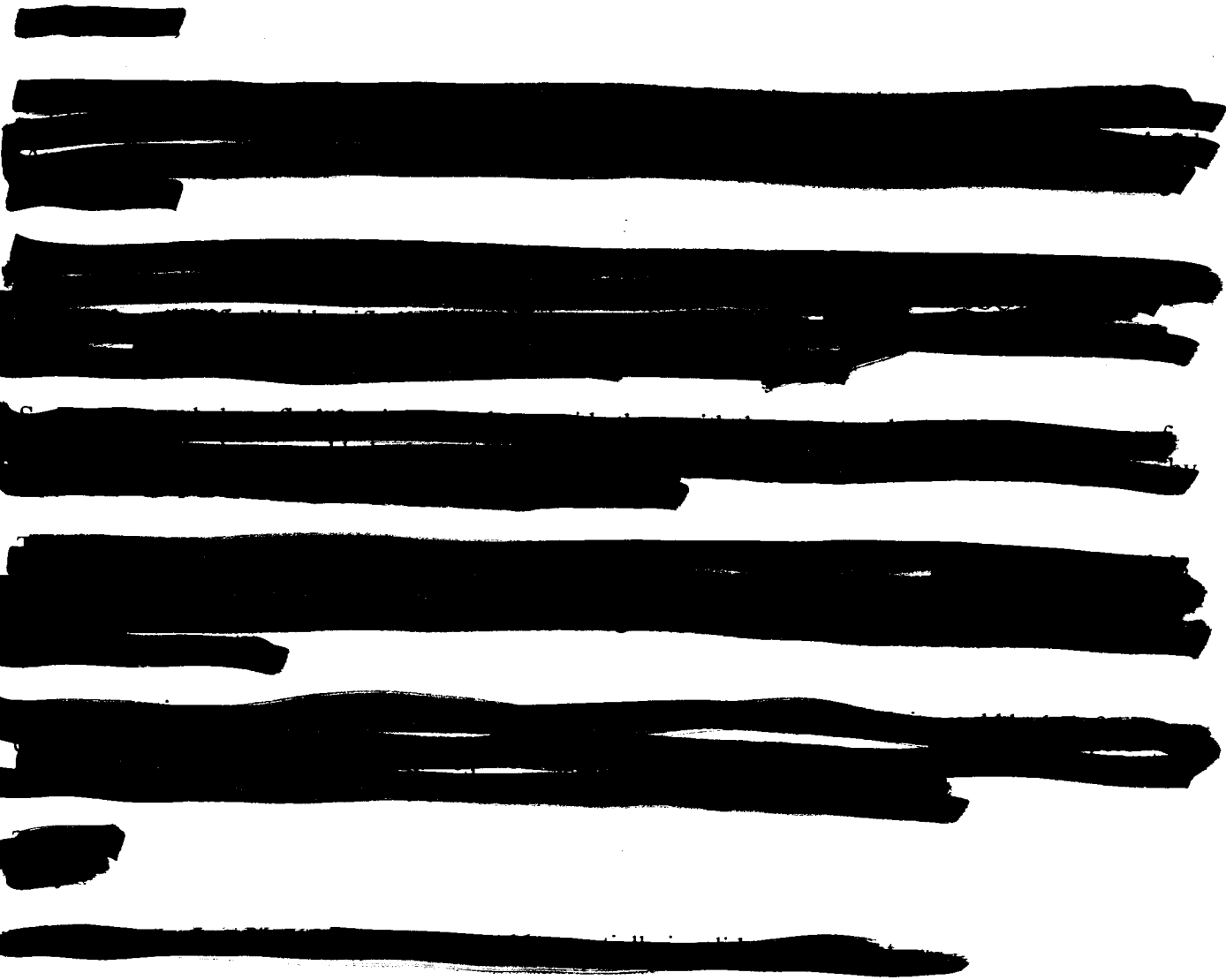
Thank You,

Frank Delgado

---

**From:** Borda, Gary G. (HQ-MC000)  
**Sent:** Thursday, October 16, 2008 11:42 AM  
**To:** Fein, Edward K. (JSC-AL); Homer, Mark W. (JPL-0910)  
**Cc:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Samuels, David A. (DFRC-L)  
**Subject:** Admin Claim for Patent Infringement - Optima Technology Group  
**Importance:** High

(b)  
(5)



Gary G. Borda  
Agency Counsel for Intellectual Property  
Office of the General Counsel

[REDACTED]  
From: Fein, Edward K. (JSC-AL)  
Sent: Thursday, October 16, 2008 1:20 PM  
To: Borda, Gary G. (HQ-MC000); Homer, Mark W. (JPL-0910)  
Cc: McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Samuels, David A. (DFRC-L)  
Subject: RE: Admin Claim for Patent Infringement - Optima Technology Group

[REDACTED]

(b)(5)

From: Delgado, Francisco J. (JSC-ER2); [REDACTED] <(b)(6)>  
Sent: Monday, September 25, 2006 9:42 PM  
To: Mike Abernathy; Fein, Edward K. (JSC-AL); Kennedy, Alan J. (HQ-MC000); [REDACTED]  
Cc: Delgado, Francisco J. (JSC-ER2); Fredrickson, Steven E. (JSC-ER)  
Subject: FW: Read: Let us chat on about SCOUT, SC3D, the X-38 program and RIS; noted below are our patents that cover said technology that RIS and your groups are using.

See email from "Mr. Adams" below.

This is getting more ridiculous by the minute. I have resisted replying in any form as suggested by JSC council. However, this matter has been left open for quite some time and something needs to be done NOW. It has come to my attention that Mr. Adams and company have issued a letter that prohibits RIS from selling any of their software until this issue is resolved. We have had a very "intellectually" fruitful relationship with RIS for almost a decade and would like to continue this relationship for many years to come. Some of the technology concepts in question were co-developed by RIS and I during many "brainstorming sessions" on how to provide optimal situation awareness to various users.

The folks pressing forward with this claim do not have solid ground to stand on (IMHO). Based on the previous research performed, I do not see how their patent claims are valid and I would like to request that NASA's council take this matter seriously and get the patents invalidated (as it should have been done when this first showed up a couple of years ago). This is not only the right legal thing to do, but also the right moral thing to do. If we allow an individual to continue to harass small companies and stand-by with little/no action, then we are no better than the company doing the harassing. As a government organization, we need to keep the public faith and trust and again, "do the right thing." I realize that patience is important in legal matter, but believe that the time for sitting idle and hoping that this matter goes away is way past due and that something needs to be done ASAP. Putting companies that NASA relies on to help move technology forward out of business with a barrage of unwarranted litigation does not seem like it is in NASA's (or our taxpayers) best interest.

Please let me know what I need to do on my end to help move this along.

BTW: If we do not deal with issue immediately it will only get worse for NASA. I know of several Projects

[REDACTED]

**From:** Homer, Mark W. (JPL-0910)  
**Sent:** Tuesday, October 21, 2008 11:17 AM  
**To:** Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Subject:** FW: UAV Patent Infringement Issue  
**Attachments:** Patent 5904724 Margolin.jd.pdf

Gentlemen,

According to DFRC's technical folks (as you can see by the attached), the UAVs flown at Dryden don't infringe on the patent (several elements in the independent claims aren't found in these aircraft). Please let me know if you need any further assistance.

Mark Homer  
818-354-7770

---

**From:** Del Frate, John H. (DFRC-Z)  
**Sent:** Tue 10/21/2008 11:00 AM  
**To:** Homer, Mark W. (JPL-0910)  
**Cc:** Brent Cobleigh; Samuels, David A. (DFRC-L)  
**Subject:** Re: UAV Patent Infringement Issue

Mark,

Attached is the patent document with my notes for each sub-element in claims 1 and 13. Let me know if you have any trouble seeing them. I could not do a copy and paste off the pdf file (it must have been locked) so rather than re-typing the sections, I just used the "note" tool in Acrobat to capture my responses.

Since May of 1999, we have tested a number of UAVs. This patent would be addressed to our most sophisticated UAVs which would include: X-36, X-45 (UCAV), Pathfinder Plus, Helios/Centurion, Altus, Altair, Ikhana, Hyper-X (X-43) and X-48B (currently flying). As I mentioned in a previous e-mail, our level of complexity in the ground control stations never reached the level described in the patent. It could go there, but it is very costly and our niche is in testing the aircraft and doing research to enable capabilities. The environment described in the patent is more for the operational level UAVs.

Again, please let me know if you need anything else.

John

On 10/20/08 1:54 PM, "Homer, Mark W. (JPL-0910)" <[mark.w.homer@nasa.gov](mailto:mark.w.homer@nasa.gov)> wrote:

John,

Thanks for your effort. Based on this information, it appears that the UAVs Dryden has used do not infringe the patent (in order for infringement to occur, all of the "sub-elements" in the independent claims (1 and 13) must be met. If you could simply provide me with why you believe that certain of the sub-elements of these two claims weren't used by Dryden, a little more specifically, so I can provide this info to HQ, that would be great. Thanks again.

Mark

---

**From:** Del Frate, John H. (DFRC-Z)  
**Sent:** Mon 10/20/2008 10:56 AM

**To:** Homer, Mark W. (JPL-0910)  
**Cc:** Brent Cobleigh  
**Subject:** Re: UAV Patent Infringement Issue

Mark,

I'm not sure how best to respond to your request, but I will take a stab, and then you can tell me what else you need. I will be responding to the Patent Claims fairly broadly but I will let Brent Cobleigh speak for the capability of the General Atomics family of aircraft.

The patent in question, in general, captures some typical features that are inherent in all UAVs. However when it shifts into using computer generated terrain models and head mounted displays, that level of sophistication was never found in our Ground Control Stations – it was possible, but we were cost and schedule constrained and it was not a requirement for meeting our goals.

I will list the claim numbers followed by a Y or N or ?. I use "?" when I'm not sure if we had that feature.

- 1 – By my count 6 sub-claims: Y, Y, N, N, N, N
- 2 – 2 sub-claims: Y, ?
- 3 – Y
- 4 – Y
- 5 – Y
- 6 – Y
- 7 – N
- 8 – N
- 9 – Y
- 10 - ?
- 11 - ?
- 12 – N
- 13 – Y, N, Y, N (in some parts of this paragraph), N (but it depends how this is defined)
- 14 – Y
- 15 – Y
- 16 – N
- 17 – Y
- 18 - ?
- 19 - ?
- 20 – Y (some of the UAVs could do this)

Let me know what else you need.

John

On 10/17/08 10:25 AM, "Homer, Mark W. (JPL-0910)" <[mark.w.homer@nasa.gov](mailto:mark.w.homer@nasa.gov)> wrote:

John,

Attached is the patent we discussed. Please focus your analysis on the numbered claims at the back of the patent. As I mentioned, the UAVs that Dryden has flown must include every element listed in the broadest claim(s) for there to be any infringement of the patent. I would focus on claim 1 and claim and claim 13 (although the elements are pretty similar in each--I'm guessing if we infringe claim 1, we also will infringe claim 13). Let me know if you have any questions. Thanks for your assistance.

Mark Homer  
818-354-7770

<<Patent 5904724 Margolin.pdf>>



[REDACTED]

---

**From:** Fein, Edward K. (JSC-AL)  
**Sent:** Tuesday, October 21, 2008 1:35 PM  
**To:** Delgado, Francisco J. (JSC-ER6)  
**Subject:** FW: UAV Patent Infringement Issue  
**Attachments:** Patent 5904724 Margolin.jd.pdf

Hi Frank ... As you will note, the Margolin patent issue has once again reared its head. Apparently, the person at HQ handling the matter, and since retired, somehow let the ball drop.

To make a long story short, HQ is now asking us to analyze the patent to determine whether the patent claims read on the X-38 vehicle. They are aware of the likelihood that the patent is invalid, based on prior art, much of which has been furnished by Mike Abernathy, but still want an analysis of potential infringement.

Note the claim-by-claim notes on the attachment inserted by folks at Dryden with respect to their UAVs.

If you could provide a similar analysis for the X-38, it would be gratefully appreciated. It will be good to finally get this matter behind us.

Let me know if you have any questions.

Thanks, Frank!

-Ed

Edward K. Fein  
Intellectual Property Counsel  
NASA Johnson Space Center  
Mail Code AL  
2101 NASA Parkway  
Houston, TX 77058

Telephone: 281-483-4871  
Fax: 281-483-6936  
E-Mail: [edward.k.fein@nasa.gov](mailto:edward.k.fein@nasa.gov)

---

**From:** Borda, Gary G. (HQ-MC000)  
**Sent:** Tuesday, October 21, 2008 11:45 AM  
**To:** Homer, Mark W. (JPL-0910); Fein, Edward K. (JSC-AL)  
**Cc:** Rotella, Robert F. (HQ-MA000)  
**Subject:** FW: UAV Patent Infringement Issue

Mark,  
Thanks much. This is very helpful. The answer from DFRC is no infringement.

Ed,  
This is what we need from someone at JSC familiar with the how we test flew the unmanned X-38 – see the notes inserted in the claims of the attached patent.

Thanks,  
Gary

Gary G. Borda  
Agency Counsel for Intellectual Property  
Office of the General Counsel  
NASA Headquarters  
300 E Street, SW, Suite 9T39  
Washington, DC 20546  
Phone: (202) 358-2038  
Cell: (202) 255-8112  
Fax: (202) 358-4341

\*\*\*\*\*

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\*\*\*\*\*

---

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**To:** Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
**Subject:** FW: UAV Patent Infringement Issue

Gentlemen,

According to DFRC's technical folks (as you can see by the attached), the UAVs flown at Dryden don't infringe on the patent (several elements in the independent claims aren't found in these aircraft). Please let me know if you need any further assistance.

Mark Homer  
818-354-7770

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**From:** Del Frate, John H. (DFRC-Z)  
**Sent:** Tue 10/21/2008 11:00 AM  
**To:** Homer, Mark W. (JPL-0910)  
**Cc:** Brent Cobleigh; Samuels, David A. (DFRC-L)  
**Subject:** Re: UAV Patent Infringement Issue

Mark,

Attached is the patent document with my notes for each sub-element in claims 1 and 13. Let me know if you have any trouble seeing them. I could not do a copy and paste off the pdf file (it must have been locked) so rather than re-typing the sections, I just used the "note" tool in Acrobat to capture my responses.

Since May of 1999, we have tested a number of UAVs. This patent would be addressed to our most sophisticated UAVs which would include: X-36, X-45 (UCAV), Pathfinder Plus, Helios/Centurion, Altus, Altair, Ikhana, Hyper-X (X-43) and X-48B (currently flying). As I mentioned in a previous e-mail, our level of complexity in the ground control stations never reached the level described in the patent. It could go there, but it is very costly and our niche is in testing the aircraft and doing research to enable capabilities. The environment described in the patent is more for the operational level UAVs.

Again, please let me know if you need anything else.

John

On 10/20/08 1:54 PM, "Homer, Mark W. (JPL-0910)" <mark.w.homer@nasa.gov> wrote:

John,

Thanks for your effort. Based on this information, it appears that the UAVs Dryden has used do not infringe the patent (in order for infringement to occur, all of the "sub-elements" in the independent claims (1 and 13) must be met. If you could simply provide me with why you believe that certain of the sub-elements of these two claims weren't used by Dryden, a little more specifically, so I can provide this info to HQ, that would be great. Thanks again.

Mark

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**From:** Del Frate, John H. (DFRC-Z)  
**Sent:** Mon 10/20/2008 10:56 AM  
**To:** Homer, Mark W. (JPL-0910)  
**Cc:** Brent Cobleigh  
**Subject:** Re: UAV Patent Infringement Issue

Mark,

I'm not sure how best to respond to your request, but I will take a stab, and then you can tell me what else you need. I will be responding to the Patent Claims fairly broadly but I will let Brent Cobleigh speak for the capability of the General Atomics family of aircraft.

The patent in question, in general, captures some typical features that are inherent in all UAVs. However when it shifts into using computer generated terrain models and head mounted displays, that level of sophistication was never found in our Ground Control Stations – it was possible, but we were cost and schedule constrained and it was not a requirement for meeting our goals.

I will list the claim numbers followed by a Y or N or ?. I use "?" when I'm not sure if we had that feature.

- 1 – By my count 6 sub-claims: Y, Y, N, N, N, N
- 2 – 2 sub-claims: Y, ?
- 3 – Y
- 4 – Y
- 5 – Y
- 6 – Y
- 7 – N
- 8 – N
- 9 – Y
- 10 - ?
- 11 - ?
- 12 – N
- 13 – Y, N, Y, N (in some parts of this paragraph), N (but it depends how this is defined)
- 14 – Y
- 15 – Y
- 16 – N
- 17 – Y
- 18 - ?
- 19 - ?
- 20 – Y (some of the UAVs could do this)

Let me know what else you need.

John

On 10/17/08 10:25 AM, "Homer, Mark W. (JPL-0910)" <mark.w.homer@nasa.gov> wrote:

John,

Attached is the patent we discussed. Please focus your analysis on the numbered claims at the back of the patent. As I mentioned, the UAVs that Dryden has flown must include every element listed in the broadest claim(s) for there to be any infringement of the patent. I would focus on claim 1 and claim and claim 13 (although the elements are pretty similar in each--I'm guessing if we infringe claim 1, we also will infringe claim 13). Let me know if you have any questions. Thanks for your assistance.

Mark Homer  
818-354-7770

<<Patent 5904724 Margolin.pdf>>

[REDACTED]  
From: McNutt, Jan (HQ-MC000)  
Sent: Monday, November 24, 2008 1:48 PM  
To: Borda, Gary G. (HQ-MC000); Rotella, Robert F. (HQ-MA000)  
Subject: FW: Emailing: newsdetail

[REDACTED] (b)(5)  
-----Original Message-----  
From: Mike Abernathy [REDACTED] (b)(6)  
Sent: Monday, November 24, 2008 1:09 PM  
To: McNutt, Jan (HQ-MC000)  
Cc: FEIN, EDWARD K. (JSC-HA) (NASA); [REDACTED]  
[REDACTED] (b)(6)  
Subject: Emailing: newsdetail

Privileged and Confidential

This is just an FYI regarding Optima's patent trolling.

Jan,

From this it appears Honeywell may have paid Optima to attack Universal Avionics in order to help Honeywell in their suit with UA.

Shortcut to: <http://www.uasc.com/marketing/newsdetail.asp?newsid=119>

But that clearly backfired and both Honeywell and Adams lost to UA.

<http://www.uasc.com/marketing/newsdetail.asp?newsid=115>

This makes much more sense in light of these two stories.

Mike Abernathy

RIS

**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Thursday, January 29, 2009 10:41 AM  
**To:** Hammerle, Kurt G. (JSC-AL)  
**Cc:** Fein, Edward K. (JSC-AL); Rotella, Robert F. (HQ-MA000); Borda, Gary G. (HQ-MC000)  
**Subject:** Margolin Patent Infringement Claim

[REDACTED]

] (b)(5)



Margolin Claim  
20030607.pdf



Margolin Claim  
20030617.pdf



SBIR Margolin  
Claim.pdf

Jan S. McNutt  
Senior Attorney (Commercial)  
Office of the General Counsel  
NASA Headquarters

[REDACTED]

(b)(6)

[REDACTED]

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**From:** Mcnutt, Jan (HQ-MC000)  
**Sent:** Thursday, April 16, 2009 11:48 AM  
**To:** Robert Adams-OTG  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.  
**Attachments:** Optima Claim Response Letter.pdf

Dr. Adams,

Please refer to the attached document.

Please respond to this email that you have received the attached document.

Regards,

*Jan S. McNutt*  
*Senior Attorney (Commercial)*  
*Office of the General Counsel*  
*NASA Headquarters*

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**From:** Robert Adams-OTG [REDACTED]  
**Sent:** Thursday, April 16, 2009 11:05 AM  
**To:** Mcnutt, Jan (HQ-MC000)  
**Subject:** FW: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

16APR09

Jan,

Can you please provide me an update as to this matter?

Dr. Adams

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**From:** Robert Adams-OTG [REDACTED]  
**Sent:** Tuesday, March 10, 2009 8:11 AM  
**To:** 'McNutt, Jan (HQ-MC000)'  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

10MAR09

Jan,

Can you please provide me an update as to this matter?

Dr. Adams

**From:** McNutt, Jan (HQ-MC000) [REDACTED]  
**Sent:** Friday, February 20, 2009 2:07 PM  
**To:** Robert Adams-OTG  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

Dr. Adams,

Thank you for your email concerning the new licensees and thank you for your patience. We are awaiting for one final communication from one of our sources that will allow us to come to a final decision and that source has indicated they are working to get us an answer by next week.

Regards,

Jan S. McNutt  
Senior Attorney (Commercial)  
[REDACTED]

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**From:** Robert Adams-OTG [REDACTED]  
**Sent:** Thursday, February 12, 2009 5:35 PM  
**To:** McNutt, Jan (HQ-MC000)  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.

Jan,

We have now licensed Cobham the parent company of Chelton Flight System and expect to wrap up a license for Rockwell in the coming weeks.

Attached you will find the voicemail from Cobham's attorney that concluded a yearlong drawn out process; as I write this letter we await the signed hard copies in the mail.

We shall be filing in Federal Court against Garmin in the coming months as they are the last one who is being definite due to their bad advice from a money hungry attorney.

Can you please provide me a status as to the resolve regarding the issues between our two companies'?

With the recent new licensee's I remain optimistic that this business matter can be resolved peacefully between our two companies.

Thank you,

Robert

**From:** McNutt, Jan (HQ-MC000) [REDACTED]  
**Sent:** Thursday, January 22, 2009 1:16 PM  
**To:** Robert Adams-OTG  
**Subject:** RE: Jan S. McNutt, Please see the attached letter; it is your response to your most recent letter.