

Complaint

IN THE MATTER OF

**MPHJ TECHNOLOGY INVESTMENTS, LLC,
JAY MAC RUST, AND FARNEY DANIELS, P.C.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4513; File No.142 3003**Complaint, March 13, 2015 – Decision, March 13, 2015*

This consent order concerns deceptive sales claims and phony legal threats mailed to thousands of small businesses across the United States in an attempt to sell licenses for certain U.S. patents. MPHJ Technology Investments, LLC and the subsidiaries that it controls (collectively “MPHJ”) are patent assertion entities. Patent assertion entities purchase patent rights and seek to generate revenue by licensing to, or litigating against, those who are or may be using the patented technology. The complaint alleges that MPHJ bought patents relating to network computer scanning technology and then told thousands of small businesses that they were likely violating the patents and should purchase a license. MPHJ further sent letters that falsely represented that many other companies had already agreed to pay thousands of dollars for licenses. The complaint alleges that additional letters were sent in the name of MPHJ’s law firm, Farney Daniels, P.C., falsely threatened the recipients with patent infringement lawsuits. The complaint alleges that these representations constitute deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act. Under the consent order, MPHJ, Farney Daniels, P.C., and MPHJ’s owner, Jay Mac Rust, are prohibited, when asserting patent rights, from making false or unsubstantiated representations that a patent has been licensed in substantial numbers or has been licensed at particular prices. The order also prohibits misrepresentations that a lawsuit will be initiated and misrepresentations about the imminence of such a lawsuit.

Participants

For the *Commission*: *Daniel O. Hanks* and *Michael Tankersley*.

For the *Respondents*: *Bryan Farney* and *Robert P. Taylor, Arnold & Porter*; and *Allen Denson* and *Joel Winston, Hudson Cook, LLP*.

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that MPHJ Technology Investments, LLC, a

Complaint

limited liability company; Jay Mac Rust, individually and as an officer of MPHJ Technology Investments, LLC; and Farney Daniels, P.C., a professional corporation (collectively, “Respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges as follows:

1. Respondent MPHJ Technology Investments, LLC, (“MPHJ”) is a Delaware limited liability company with a registered agent at 1013 Centre Road, Suite 403S, Wilmington, Delaware, 19805. MPHJ has 101 subsidiaries, each of which is a Delaware limited liability company, and each of which has a registered agent at 1013 Centre Road, Suite 403S, Wilmington, Delaware, 19805.

2. Respondent Jay Mac Rust is the sole member and manager of MPHJ and the sole manager of each of MPHJ’s 101 subsidiaries. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of MPHJ, including the acts and practices set forth in this Complaint. His principal place of business is 510 North Valley Mills Drive, Suite 505, Waco, Texas, 76710.

3. Respondent Farney Daniels, P.C., (“Farney Daniels”) is a Texas professional corporation with its principal office or place of business at 800 South Austin Avenue, Suite 200, Georgetown, Texas, 78626.

4. The acts and practices of the Respondents as alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RESPONDENTS’ BUSINESS ACTIVITIES

5. MPHJ and the subsidiaries that it controls are Patent Assertion Entities. Patent Assertion Entities purchase patent rights and seek to generate revenue by licensing to or litigating against those who are or may be using patented technology.

6. In September 2012, MPHJ purchased from another Patent Assertion Entity, Project Paperless, LLC, all right, title, and

Complaint

interest to four U.S. patents and one pending U.S. patent application on the work of inventor Laurence C. Klein (the “Klein Patents”). The four patents, U.S. Patent Nos. 7,986,426; 6,771,381; 7,477,410; and 6,185,590; and Application No. 13/182,857 (issued as Patent No. 8,488,173 in 2013) generally pertain to networked scanning systems. More particularly, Respondents assert that the Klein Patents, individually or in combination, cover certain computer management systems capable of transmitting electronic images, graphics, and/or documents through a communications network from a network addressable scanner, digital copier, or other multifunction peripheral to external devices, files, and applications.

7. Beginning in September 2012 and continuing through June 2013, the Respondents conducted a campaign to promote and sell licenses for the Klein Patents through letters sent to thousands of small businesses located in all fifty states and the District of Columbia.

8. In September 2012, MPHJ entered into written “Exclusive License Agreements” with various of its subsidiaries. Each written license agreement assigned to a respective subsidiary a purportedly exclusive right to license the Klein Patents to entities within a specified “Commercial Field” and “Geographical Field.”

9. Each of the various written “Exclusive License Agreements” between MPHJ and its subsidiaries, and each amendment to such agreements, was signed by Respondent Rust both on behalf of MPHJ and on behalf of each subsidiary.

10. In September 2012, MPHJ also entered into a written agreement with Farney Daniels. The terms of the agreement provided that Farney Daniels “will represent MPHJ in connection with legal services related to enforcement, monetization, assertion, licensing, and/or sale” of the Klein Patents. Under the agreement, Farney Daniels would not charge MPHJ hourly fees, and MPHJ gave the firm a 30–40% interest in all payments to MPHJ or its subsidiaries from any licensees, alleged infringers, or purchasers of the Klein Patents that had been contacted or identified by Farney Daniels. Specifically, the agreement entitles Farney Daniels to 40% of the gross amount paid by entities that Farney Daniels had sued or with which Farney Daniels was

Complaint

“substantially engaged,” and 30% of the gross amounts paid by all other entities.

11. The September 2012 written agreement between MPHJ and Farney Daniels was signed by Respondent Rust on behalf of MPHJ.

RESPONDENTS’ THREE-STAGE CAMPAIGN TO PROMOTE
AND SELL LICENSES

12. In September 2012, the Respondents began their nationwide campaign to promote and sell licenses for the Klein Patents to small businesses. The Respondents’ campaign involved three stages of letters.

13. Respondents selected the recipients of their letters based on two pieces of information obtained from business directory databases: (a) an estimate of the number of the business’s employees, and (b) the business’s standard industrial classification (“SIC”). Specifically, Respondents sent their letters to businesses identified as having (a) between 20 and 99 employees; and (b) a primary line of business in one of 54 SIC codes selected by Respondents, including those for Veterinary Services, Lawn and Garden Services, Building Maintenance Services, and Medical Laboratories.

14. In the first stage of the campaign, Respondents sent a letter in the name of one of MPHJ’s various subsidiaries on letterhead featuring the name of that subsidiary (“First Letter”). In each First Letter, Respondents stated that the entity identified as the sender is the licensing agent for the Klein Patents. Eighty-one different subsidiary names were used over the length of Respondents’ campaign: AllLed, LLC; AbsMea, LLC; AccNum, LLC; AllOrd, LLC; AdzPro, LLC; ArdSan, LLC; ArdTec, LLC; AppVal, LLC; BavLin, LLC; BarMas, LLC; BetNam, LLC; BilOlt, LLC; BriPol, LLC; BruSed, LLC; BosTra, LLC; BunVic, LLC; Callad, LLC; CapMat, LLC; CalNeb, LLC; CleOrv, LLC; ChaPac, LLC; CelSta, LLC; ComTim, LLC; CraVar, LLC; DelLog, LLC; DayMas, LLC; DesNot, LLC; DreOcc, LLC; DucPla, LLC; DriSud, LLC; DraTom, LLC; DolVol, LLC; EliLand, LLC; ElaMon, LLC; EntNil, LLC; EleOde, LLC; EliPut, LLC; EstSto, LLC; EtaTri, LLC; EquiVas, LLC; FasLan, LLC;

Complaint

FraMor, LLC; FolNer, LLC; FenObe, LLC; FanPar, LLC; FreSta, LLC; FinTas, LLC; FloVis, LLC; GreLea, LLC; GraMet, LLC; GosNel, LLC; GanOrb, LLC; GanPan, LLC; GamSta, LLC; GenTro, LLC; GimVea, LLC; HunLos, LLC; HanMea, LLC; HarNol, LLC; HadOpp, LLC; HeaPle, LLC; HorSan, LLC; HurTom, LLC; HasVen, LLC; InnLost, LLC; IsaMai, LLC; InaNur, LLC; IndOrp, LLC; IntPar, LLC; InkSen, LLC; IntTen, LLC; IbiVen, LLC; JusLem, LLC; JonMor, LLC; JitNom, LLC; JanOrt, LLC; JudPar, LLC; JunSpe, LLC; JabTre, LLC; JamVor, LLC; and Networked Scanning Solutions, LLC.

15. Each First Letter states that the recipient is likely infringing the Klein Patents by using common office equipment, and that “we are contacting you to initiate discussions regarding your need for a license.”

16. Over the course of the campaign, the Respondents used different versions of the First Letter that share a core text. One such First Letter, redacted to remove the name and address of the recipient, is attached as Exhibit A.

17. Beginning in September 2012 and continuing through May 2013, the Respondents sent First Letters to approximately 16,465 small businesses located in all fifty states and the District of Columbia.

18. In the second stage of their campaign, Respondents sent letters in the name of Farney Daniels on Farney Daniels letterhead (“Second Letter”). The signature block of each Second Letter contains the name of one of two Farney Daniels attorneys.

19. Each Second Letter references the First Letter and states that, because there has been no response to the First Letter, “our client reasonably assumes you have an infringing system and need a license” and has referred the matter to Farney Daniels. Each Second Letter identifies Farney Daniels’s client by one of the eighty-one different subsidiary names that had been used in the First Letters. Each Second Letter states that “[w]hile our representation of [one of eighty-one different subsidiary names] can involve litigation, it is our client’s preference here that we first make all reasonable efforts to reach agreement on a license.

Complaint

To that end, we do need to hear from you within the next two weeks.”

20. Over the course of the campaign, the Respondents used different versions of the Second Letter that share a core text. One such Second Letter, redacted to remove certain name and address information, is attached as Exhibit B.

21. Beginning in October 2012 and continuing through May 2013, Respondents sent Second Letters to approximately 10,265 of the small businesses located in all fifty states and the District of Columbia that had been sent the First Letter.

22. In the third stage of their campaign, Respondents sent a letter in the name of Farney Daniels on Farney Daniels letterhead (“Third Letter”). Like the Second Letter, the Third Letter identifies Farney Daniels’s client by one of the eighty-one different subsidiary names that had been used in the First Letters. The signature block of each Third Letter contains the name of one of two Farney Daniels attorneys.

23. Each of the Third Letters references the First and Second Letters and states that, if the recipient does not respond within two weeks, it will be sued for patent infringement.

24. Each Third Letter was accompanied by a Complaint, typically nine pages in length, that alleges a cause of action for patent infringement against the small business to which the letter was addressed.

25. Over the course of the campaign, the Respondents used different versions of the Third Letter and Complaint that share a core text. One such Third Letter and Complaint, redacted to remove certain name and address information, is attached as Exhibit C.

26. Beginning in December 2012 and continuing through May 2013, Respondents sent Third Letters to approximately 4,870 small businesses located in all fifty states and the District of Columbia. On several dates during this period, Respondents sent versions of these Third Letters to hundreds of small businesses in a single day. For example, on April 1, 2013, Respondents sent approximately 1,718 Third Letters threatening to file a complaint

Complaint

for patent infringement against small business recipients located in forty-nine states if Respondents did not hear from the recipient within two weeks of the date of the letter.

27. Respondents MPHJ, Farney Daniels, and Rust were aware of and approved or ratified the contents of all three letters used in Respondents' campaign.

28. Respondent Farney Daniels was aware of the contents of the First Letters and explicitly or implicitly referenced and incorporated the representations in those letters in Second and Third Letters sent in the name of Farney Daniels.

RESPONDENTS' REPRESENTATIONS CONCERNING SUBSTANTIAL SALES

29. In each of the First Letters sent to small businesses from September 2012 through February 2013, Respondents represented, among other things, that "we have had a positive response from the business community to our licensing program," that "most businesses, upon being informed that they are infringing someone's patent rights, are interested in operating lawfully and taking a license promptly," and that "[m]any companies have responded to this licensing program in such a manner."

30. The First Letters sent from September 2012 through February 2013 further state that the responses of "[m]any companies" had allowed the entity identified as the sender "to determine . . . a fair price for a license negotiated in good faith and without the need for court action." Some versions of those First Letters state that the price determined through the responses of "[m]any companies" was "a payment of \$1,200 per employee." Other versions of those First Letters state that the price determined through the responses of "[m]any companies" was "a payment of \$1,000 per employee."

31. From September 2012 through February 2013, the Respondents sent to small businesses located in all fifty states approximately 9,081 First Letters that contain the representations concerning substantial sales of licenses for the Klein Patents identified in Paragraphs 29–30.

Complaint

32. When Respondents sent the first 7,366 of these First Letters, Respondents had not sold a single license for the Klein Patents through Respondents' nationwide campaign of letters.

33. When Respondents sent the next 1,077 of these First Letters, Respondents had sold a license for the Klein Patents to only one of the approximately 7,366 small businesses that Respondents had contacted in their licensing campaign.

34. When Respondents sent the final 638 of these First Letters, the Respondents had sold a license to the Klein Patents to only two of the 8,443 small businesses that Respondents had contacted in their licensing campaign.

35. Beginning in March 2013, Respondents sent First Letters that did not include the representations concerning substantial sales of licenses for the Klein Patents identified in Paragraphs 29–30.

RESPONDENTS' REPRESENTATIONS CONCERNING LEGAL ACTION

36. In each of the Third Letters sent to small businesses from December 2012 to May 2013, Respondents represented that patent licensing agent will initiate legal action for patent infringement against letter recipients that do not respond to the Respondents' letters, and that such legal action is imminent. Specifically, the Third Letters state, among other representations, that "[i]f we do not hear from you within two weeks from the date of this letter, our client will be forced to file a Complaint against you for patent infringement in Federal District Court where it will pursue all of the remedies and royalties to which it is entitled." The Third Letter further states that "we must hear from you within two weeks of the date of this letter" (emphasis in original) and that "litigation will ensue otherwise."

37. Each Third Letter was accompanied by a Complaint. The Complaints generally are captioned for the federal judicial district in which the recipient small business's mailing address is located. The signature block of most of the Complaints accompanying the Third Letters bears the name and signature of one of two Farney Daniels attorneys. Each Complaint alleges a cause of action for

Complaint

patent infringement against the small business to which the letter was addressed, and claims that the small business is liable for damages and attorneys fees.

38. At the time Respondents sent the Third Letters and accompanying Complaints, Respondents were not prepared to initiate legal actions for infringement of the Klein Patents against the small businesses that did not respond to the Respondents' letters, and did not intend to promptly initiate such litigation.

39. To date, the Respondents have not initiated a single legal action for infringement against any of the small businesses that did not respond to the Third Letters and accompanying Complaints.

VIOLATIONS OF THE FTC ACT

COUNT I

40. In connection with the promotion, offering for sale, and sale of licenses relating to U.S. patents, the Respondents have represented, directly or indirectly, expressly or by implication, that substantial numbers of businesses who had received the Respondents' letters agreed to pay substantial compensation to license the Klein Patents.

41. The representations set forth in Paragraph 40 are false or misleading, or were not substantiated at the time the representations were made.

COUNT II

42. In connection with the promotion, offering for sale, and sale of licenses relating to U.S. patents, the Respondents have represented, directly or indirectly, expressly or by implication, that they will initiate legal action for patent infringement against small businesses that do not respond to the Respondents' letters, and that such legal action is imminent.

43. In fact, Respondents were not prepared to initiate legal action and did not intend to initiate legal action for patent infringement against small businesses that did not respond to the Respondents' letters, and were not prepared to initiate and did not

Complaint

intend to initiate such legal action imminently. Therefore, the representations set forth in Paragraph 42 are false or misleading.

44. The acts or practices of the Respondents as alleged in this Complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirteenth day of March, 2015, has issued this complaint against Respondents.

By the Commission.

Complaint

EXHIBIT A

1B

DesNot, LLC

40 East Main Street, #19
Newark, DE 19711
855-812-2117
licensing@desnot.org
November 29, 2012



Re: DesNot Patent Licensing Program – File No. 1015296

We are the licensing agent for certain U.S. patents listed below. We have identified your company as one that appears to be using the patented technology, and we are contacting you to initiate discussions regarding your need for a license. In this letter, we explain what the patents cover, how you likely have an infringing system, explain why a license is needed, and provide you the general terms for such a license. We also answer some frequently asked questions, as well as explain how you can determine whether you do have an infringing system that requires a license. We should note that we have written you with the understanding that you are the proper person to contact on behalf of [REDACTED]. If you are not the proper person to handle this matter on behalf of the company, please provide this letter to the proper person, and notify us so that we may update our records and contact them directly in the future.

To turn to the matter at hand, the patents for which we are the licensing agent are listed below. The list includes both issued U.S. patents, as well as a patent application which is expected to issue in the future as an additional U.S. patent.

1. U.S. Pat. No. 7,986,426 (“Distributed Computer Architecture And Process For Document Management”);
2. U.S. Pat. No. 7,477,410 (“Distributed Computer Architecture And Process For Virtual Copying”);
3. U.S. Pat. No. 6,771,381 (“Distributed Computer Architecture And Process For Virtual Copying”);
4. U.S. Pat. No. 6,185,590 (“Process And Architecture For Use On Stand-Alone Machine And In Distributed Computer Architecture For Client Server And/Or Intranet And/Or Internet Operating Environments”); and
5. 13/182,857 filed July 14, 2011 (“Distributed Computer Architecture And Process For Document Management”).

You can find and review each of the issued patents listed above at www.google.com/patents.

Complaint

EXHIBIT A

Page 2

As you may know, a patent's scope is defined by its claims, and you will see that each of the above-listed patents have different claims. While those differences matter and mean each patent is distinct, the patents listed above do, as a group, generally relate to the same technology field, and cover what at the time was a groundbreaking distributed computer architecture and process for digital document management. An illustrative embodiment of the architecture of the patents is provided in Figure 28, which is reproduced here for your reference.



Fig. 28

A good example of an infringing system, and one your company likely uses, is an office local area network ("LAN") which is in communication with a server, employee computers having email software such as Outlook or Lotus, and a third-party scanner (or a multi-function printer with scanning functionality) which permits the scanning of a document directly to employee email address as a pdf attachment. Such a system would be a typical example of what infringes. There are other examples listed further below.

We note here that the scope of the patents is technically defined by the claims, and the language of the claims defines the legal scope of the patents. The more generalized examples provided in this letter are for your convenience and should not be considered exact substitutes for the more detailed claims. As such, you may find it useful to consider, as illustrative examples, claims 1-5 of the '426 Patent. Reviewing those you can see that the patent claims are directed to a system having a digital copier/scanner/multifunction device with an interface to office equipment (or to the web) and related software, for scanning or copying and transmitting images electronically to one or more destinations such as email, applications or other local files. Coverage of this type of system, and of the more generally worded example in the previous paragraph, is further reflected in claims 1, 8 and 15 of the '410 Patent, claims 12 and 15 of the '381 Patent, and claims 9 and 16 of the '590 Patent. Obviously each claim is separately drafted and you should consider the scope of each claim separately.

To assist you in confirming that you need a license, we provide illustrative examples of infringing systems below in the form of a brief set of fact checklists that you can use to determine if your system is one for which you should contact us about a license. If you can answer "YES" to each question under any of the scenarios A through C below, then you should contact us promptly.

Complaint

EXHIBIT A

Page 3

A. Internetworking of Scanner/MFP and Email (SMTP, IMAP, POP3)Yes No

- ☐ ☐ 1. Does your company use document scanning equipment that is network addressable (*i.e.*, it has an IP address and can communicate on your network);
- ☐ ☐ 2. Does your company use Microsoft Exchange/Outlook, Lotus Domino/Notes or a comparable system for company email;
- ☐ ☐ 3. Are at least some of your employees' email addresses loaded into the scanner, so that you can select to whom you wish to send a scanned document by email; or, alternatively, can you manually input an employee's email address into the scanner to whom you wish a scanned document to be sent; and
- ☐ ☐ 4. Can you cause your scanner to transform your paper document to a .pdf file, and have it automatically transmitted to one or more of your employees by email. By automatically, we mean that pressing a "Start" or "Go" button instigates both the copying of the document and the automatic transmission of the document to its intended destination (such as a Microsoft Outlook email inbox).

B. Scanner/MFP and Sharepoint (HTTP and HTTPS)

- ☐ ☐ 1. Does your company use document scanning equipment that is network addressable (*i.e.*, it has an IP address and can communicate on your network);
- ☐ ☐ 2. Does your company use Microsoft Sharepoint; and
- ☐ ☐ 3. Is your scanner equipment configured so that you can scan a document and automatically transmit it to a Sharepoint site address.

C. Scanner/MFP and FTP/SFTP Site

- ☐ ☐ 1. Does your company use document scanning equipment that is network addressable (*i.e.*, it has an IP address and can communicate on your network);
- ☐ ☐ 2. Does your company use File Transfer Protocol and/or Secure File Transfer Protocol; and
- ☐ ☐ 3. Is your scanner equipment configured so that you can scan a document and automatically transmit it to an FTP or SFTP site.

Our research, which includes review of several marketplace trends and surveys, including various IDC reports, Infotrends reports and market share analyses, as well as a recent survey of an IT service company about the internal network environments of its clients, has led us to the conclusion that an overwhelming majority of companies like yours utilize systems that are set up to practice at least one of scenarios A through C above. Indeed, such practices are now standard in many industries. As a common example, our investigation has shown that most businesses have migrated to the usage of corporate email servers running Exchange or Lotus Domino/Notes and have further incorporated digital scanning into their workflows.

Complaint

EXHIBIT A

Page 4

As your organization almost certainly uses in its day-to-day operations digital copier/scanner/multifunction equipment which is interfaced to a separate central office computer (an office network), so that digital images may be scanned and transmitted to one or more destinations such as email accounts and other applications, you should enter into a license agreement with us at this time.

If you believe you are in the unusual position of not having a system that can practice any of scenarios A through C outlined above, or otherwise avoids the requirements of the patent claims, please contact us so we may discuss means for confirming that. Upon appropriate confirmation, we would agree you have no need of a license and would not intend to pursue the matter further unless circumstances changed in a way to warrant reopening a reasonable inquiry. The materials we likely would require could include copies of the user manuals for your office copying/scanning equipment, along with the IP addresses and 2012 daily activity logs for each of them, as well as the registry of each of the email servers and file servers used in your company. These would allow us to determine whether we agree with your assessment. Of course, we are willing to treat any information you provide us as confidential and we will sign a non-disclosure agreement to that effect if you so desire. We should note that the examples A through C above are not an exhaustive list of the systems which may infringe, and that it may be determined that your system nevertheless requires a license even if it does not exactly fit one of the more common examples we have provided in this letter. However, when you provide us with the above information, we will be able to make that determination and explain that situation to you, if it exists.

You should know also that we have had a positive response from the business community to our licensing program. As you can imagine, most businesses, upon being informed that they are infringing someone's patent rights, are interested in operating lawfully and taking a license promptly. Many companies have responded to this licensing program in such a manner. Their doing so has allowed us to determine that a fair price for a license negotiated in good faith and without the need for court action is a payment of \$1,200 per employee. We trust that your organization will agree to conform your behavior to respect our patent rights by negotiating a license rather than continuing to accept the benefits of our patented technology without a license. Assuming this is the case, we are prepared to make this pricing available to you.

As part of our licensing program, we have received certain common inquiries that frequently are asked. In anticipation that you might have some of those same questions, and with an interest in addressing those sooner than later, we wish to provide some additional information as well.

One common question we have been asked is why we are not contacting the manufacturers of the scanning equipment or application software directly. The answer is our patent rights do not claim any scanning equipment, network file systems, FTP or Sharepoint sites, or email systems *alone*. Instead, our patent rights are addressed to end user enterprise systems which use network scanners or MFPs interoperably with other software/systems in order to practice the patented solution. As such, we would not, and do not, expect any manufacturer of a particular piece of equipment or software to accept any responsibility for the infringement created by the overall system, of which their product is only a part. Further, we expect that if you review your own agreements with these manufacturers, you will find that likewise they do not owe you any duty to indemnify you for situations where you combine a piece of equipment or software with other equipment or software to make a larger, more integrated (and useful) system.

Complaint

EXHIBIT A

Page 5

Another common question is whether (or why) you have been singled out to receive this letter, as you may believe there are other companies like you that have not been contacted. Our response to that is to assure you that we have an ongoing vigorous licensing program that is being handled as promptly as possible, and that we fully expect to address the companies who are in need of a license. That said, your infringement of the patent rights is not justified by the infringement by others, as we are sure you understand.

We do invite you to consult with a patent attorney regarding this matter. Patents are exclusive property rights granted by law, and there can be serious consequences for infringement. Infringers who continue to infringe in the face of an objectively high risk of infringement of a valid patent can be forced to pay treble (triple) the actual damages, as well as the patent owner's litigation costs, including all attorney's fees.

Please let us hear from you within two weeks of the date of this letter, so that we may agree with you upon an appropriate license arrangement if one is needed. You may answer by contacting us by mail, phone, or email at the address provided at the start of this letter. We look forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Martin", with a stylized, cursive script.

David Martin

Complaint

EXHIBIT B**FARNEY DANIELS PC**

Silicon Valley
Dallas

800 South Austin Ave., Suite 200
Georgetown, Texas 78626-5845

www.farneydaniels.com

November 16, 2012

Delaware
Austin/Georgetown



Re: DesNot, LLC Patent Licensing

We are writing on behalf of our client, DesNot, LLC ("DesNot"). Several weeks ago, they wrote you a letter regarding their licensing program with respect to certain U.S. patents. The patents related to systems that, among other things, can permit scanning a document and have it automatically sent over a local area network to an email account. These patents included U.S. Pat. Nos. 7,986,426; 7,477,410; 6,771,381; 6,185,590. In their letter, our client described these patents, the technology, and infringement. They then asked you either to respond by entering into discussions to take a license, or, if appropriate, to provide confirmation that your company does not have an infringing system. Having not heard from you, our client reasonably assumes you do have an infringing system and need a license. Accordingly, they have referred the matter to us to determine whether we may be able to work out a license with you, or whether additional steps might be required.

As background, our firm practices nationally and specializes solely in patent litigation and licensing. While our representation of DesNot can involve litigation, it is our client's preference here that we first make all reasonable efforts to reach agreement on a license. To that end, we do need to hear from you within the next two weeks.

We also wish to reiterate the position of our client in its first letter that they have no interest in seeking a license from someone who does not infringe. If your company does not use a system covered by the patents, or does not have a system that would perform any of the Scenarios A through C mentioned in the first letter, then we will discuss with you how your position can be confirmed so that we may discontinue further unnecessary correspondence. In the far more likely scenario that you do need a license, we are prepared to work with you to reach an agreement on reasonable terms.

We do encourage you to retain competent patent counsel to assist you in this matter, if you have not already done so. If you have already retained patent counsel, please forward this letter to them, and have them advise us of their representation (or you may so inform us directly) so that we may direct all future correspondence to them.

You may contact us at 512-508-8481.

Sincerely,



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52/54 77

FTC 000030

Complaint

EXHIBIT C

FARNEY DANIELS LLP

*Silicon Valley
Dallas*

800 South Austin Ave., Suite 200
Georgetown, Texas 78626-5845
www.farneydaniels.com

*Delaware
Austin/Georgetown*

January 21, 2013

Via First Class Mail



Re: CalNeb, LLC Patent Licensing

We write with respect to the patent licensing efforts of our client, CalNeb, LLC. This is the third letter you have received on this topic. The first letter, sent to you some time ago, provided a detailed explanation of what our client's patents cover, how you likely have an infringing system and therefore require a license, and provided you with the general terms for such a license. We then wrote you several weeks ago, noting that our client had not received a response from you, and had turned the matter over to us in hopes that we would be able to work out a license agreement. Both letters advised you to seek patent counsel for assistance. As you have not contacted us to explain that you do not have an infringing system, we reasonably can only assume that the system you are using is covered by the patents. In that case, you do need a license.

Accordingly, if we do not hear from you within two weeks from the date of this letter, our client will be forced to file a Complaint against you for patent infringement in Federal District Court where it will pursue all of the remedies and royalties to which it is entitled. The Complaint is attached, so that you may review it and show it to your counsel. Please note that we reserve the right to modify the Complaint, including adding additional patents, before we file. While our client would like to avoid litigation, it takes its licensing responsibilities seriously, as well as its responsibilities to protect the interests of all the companies who have already taken the proper step of obtaining a license. As stated in both the first and second letters you received, our client has no interest in seeking a license from someone who does not infringe. To reiterate this point one last time, if your company does not use a system covered by the patents, we urge you to contact us to confirm non-infringement so that we may discontinue our correspondence with you and avoid the unnecessary expense associated with a lawsuit.

In the far more likely scenario that you do need a license, we are prepared to work with you to reach an agreement on reasonable terms, but we must hear from you within two weeks of the date of this letter. Given that litigation will ensue otherwise, we again encourage you to retain competent patent counsel to assist you in this matter. If you have already retained patent counsel, please forward this letter to them and inform us of your choice of counsel so that we may direct all future correspondence to them.

You may contact me at (512) 508-8481.

Sincerely,



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Complaint

EXHIBIT C

3B

IN THE UNITED STATES DISTRICT COURT
Southern District of New York

CalNeb, LLC

Plaintiff,

v.

Civil Action No. _____

JURY TRIAL REQUESTED

Defendant.

COMPLAINT

Plaintiff CalNeb, LLC ("CalNeb" or "Plaintiff"), by way of Complaint against Defendant
[REDACTED] or "Defendant"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff CalNeb is a limited liability company organized under the laws of Delaware with its principal place of business at 40 East Main Street, #19, Newark, DE 19711.

3. Defendant [REDACTED] is a business with a principal place of operation at
[REDACTED]

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)&(c) and 1400(b).

Complaint

EXHIBIT C

5. This Court has personal jurisdiction over Defendant for at least the following reasons: (i) [REDACTED] has, upon information and belief, knowingly and intentionally committed acts of patent infringement at least in this District and (ii) [REDACTED] regularly does business or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to individuals in this District.

RELEVANT FACTS

6. This is a case where the Plaintiff owns valuable patent rights through a combination of issued patents and patents pending which cover the Defendant's ability to operate an information technology system within which its employees are able to scan a document into such things as (a) an email attachment, including transmittal of the attachment over a local area network or across the Internet; (b) a digital document file format, transmitted over a local area network or across the Internet, including storage of the document into its network files so that it can be accessed by Defendant's employees through one or more software applications; (c) a digital document, including transmittal of the document to a Sharepoint site or an FTP site. These patent rights are valuable because of the efficiencies they add to the workplace via the fast, reliable transmission of data without the added cost, delay and unreliability of paper-based systems of the prior art.

7. Defendant obtained this technology by integrating hardware, software and other equipment provided by various companies, none of which individually are accused of infringing the Plaintiff's patent rights. However, the Defendant has brought these diverse elements together into a data management system that infringes Plaintiff's patent rights.

8. Plaintiff has previously communicated in writing with Defendant about its patent rights, including setting forth its view that Defendant should take a license to one or more of its

Complaint

EXHIBIT C

patents. Defendant has not denied the use of the infringing technology, but has thus far been unwilling to share any of its own business information requested by Plaintiff, and has furthermore failed to cease its illegal theft of Plaintiff's patent rights.

9. Upon information and belief, Defendant has created and maintains a system for collecting, storing and accessing information.

10. Upon information and belief, Defendant utilizes a network addressable scanner and or a network addressable multifunction device (each of which is hereby described as an "IP scanner"). The IP scanner is capable of scanning paper into a digital form. Said IP scanner has its own IP address. It is configured so that various employee email addresses may be inputted into it in advance. Said IP scanner also includes a user interface which permits the user to input, *inter alia*, an intended recipient's email address, and then to press a button, which in turn triggers the scanning of paper into a digitally-formatted file that is automatically emailed to the intended recipient's email address. Upon information and belief, such IP scanner is configured to support similar related functionality such as scanning a document into a digital file that it transmitted to a Sharepoint site and/or to an FTP site, where it may be accessed by one or more of Defendant's employees. To be clear, Plaintiff is not alleging or contending that IP scanner equipment alone infringes any patent rights.

11. Upon information and belief, Defendant utilizes within its IT infrastructure an email system. Upon information and belief, Defendant utilizes Microsoft Exchange and Outlook, which runs on at least one server, in order to aid the process of communicating a digital image from an IP scanner to an intended email destination. Again, Plaintiff is not alleging or contending that these Microsoft products (or servers running them) by themselves infringe any patent rights.

Complaint

EXHIBIT C

12. Upon information and belief, Defendant utilizes an IP scanner capable of scanning paper into a digital form. Said IP scanner includes a user interface which permits the user of the IP scanner to input, *inter alia*, an intended network file destination, and to then press a button, which in turn triggers the scanning of paper into a digitally-formatted file that is automatically transmitted to and stored within the designated network file destination. To be clear, Plaintiff is not alleging or contending that the IP scanner equipment alone infringes any patent rights.

13. Upon information and belief, Defendant utilizes Microsoft Windows in a client server configuration, in order to aid the process of communicating a digital image from a scanner/copier to an intended file destination accessible to a file server. Again, Plaintiff is not alleging or contending that these Microsoft products (or server running Microsoft products) by themselves infringe any patent rights.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,477,410

14. CalNeb repeats and re-alleges the allegations of all of the preceding paragraphs as if fully set forth herein.

15. On January 13, 2009, United States Patent No. 7,477,410 (hereinafter referred to as the "'410 Patent'"), entitled DISTRIBUTED COMPUTER ARCHITECTURE AND PROCESS FOR VIRTUAL COPYING, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '410 Patent is attached as Exhibit A to this Complaint.

16. CalNeb is the exclusive licensee for the field pertinent to the Defendant in and to the '410 Patent, with sufficient rights and interest in the '410 Patent as to have standing to

Complaint

EXHIBIT C

assert all causes of action arising under said patent and the right to any remedies for infringement of it with respect to [REDACTED]

17. Upon information and belief, Defendant has in the past and continues to directly infringe at least Claim 8 and other claims of the '410 Patent by making and using in this judicial district and elsewhere in the United States, a data management system possessing all of the elements of at least these claims.

18. Upon information and belief, Defendant uses at least one network addressable scanner, digital copier or other multifunction peripheral (collectively, "digital copying devices") capable of creating a digital copy of a physical document (*e.g.*, a paper document).

19. Upon information and belief, Defendant uses one or more central computer(s) or server(s) for sharing access to information (collectively, Defendant's "file server") among desktop computers and/or other computers used by Defendant's employees (collectively, "client computers") and/or mobile devices used by Defendant's employees such as Blackberry® devices and other smartphones.

20. Upon information and belief, Defendant uses one or more central computer(s) or server(s) running corporate electronic email software (collectively, Defendant's "email server").

21. Upon information and belief, Defendant's file server and its email server are each connected to data stored in an electronic storage medium ("Defendant's data storage") such that certain of Defendant's data located in Defendant's data storage is accessible to Defendant's file server and/or email server.

22. Upon information and belief, Defendant uses memory in its file server and/or email server which stores software permitting electronic communication between Defendant's file server and at least one of the Defendant's digital copying devices.

Complaint

EXHIBIT C

23. Upon information and belief, Defendant uses memory in its file server and/or email server which stores software permitting electronic communication between Defendant's file server and at least one of the Defendant's client computers.

24. Upon information and belief, Defendant uses memory in its file server and/or email server which stores software permitting electronic communication between Defendant's email server and at least one of the Defendant's digital copying devices.

25. Upon information and belief, Defendant uses memory in its file server and/or email server which stores software permitting electronic communication between Defendant's email server and at least one of the Defendant's client computers.

26. Upon information and belief, Defendant uses software operated on or in conjunction with its file server and/or its email server and/or its data storage to replicate and transmit one or more digital copies of physical documents such as paper documents to one or more servers or client computers.

27. This replication and transmission occurs as a result of a user-command communicated through a graphical user interface (GUI), without any modification of any of Defendant's client computers, and without any modification of Defendant's software source code.

28. As a consequence of the infringement of the '410 Patent by the aforesaid Defendant, Plaintiff is entitled to recovery of past damages in the form of, at a minimum, a reasonable royalty.

29. Defendant's conduct since at least Defendant's receipt of the first communication from Plaintiff to Defendant regarding the '410 Patent also has induced infringement and/or contributed to infringement by others. For this indirect infringement, Plaintiff also is entitled to recover damages in the form of, at a minimum, a reasonable royalty.

Complaint

EXHIBIT C

30. Moreover, as a consequence of the prior communication of patent rights by Plaintiff to Defendant, combined with Defendant's failure to cease and desist from further infringement in the face of the objective risk of infringement, the infringement is willful, giving rise to Plaintiff's claims for trebling of the damages in this case, as well as to Plaintiff's claims that this is a case where Defendant should reimburse Plaintiff for its attorneys' fees and other costs of litigation pursuant to 35 U.S.C. Section 285.

COUNT II- INFRINGEMENT OF U.S. PATENT NO. 7,986,426

31. CalNeb reasserts and incorporates herein by reference the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

32. On July 26, 2011, U.S. Patent No. 7,986,426 (hereinafter referred to as the "'426 Patent"), entitled DISTRIBUTED COMPUTER ARCHITECTURE AND PROCESS FOR DOCUMENT MANAGEMENT, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '426 Patent is attached as Exhibit B to this Complaint.

33. CalNeb is the exclusive licensee for the field pertinent to the Defendant in and to the '426 Patent, with sufficient rights and interest in the '426 Patent as to have standing to assert all causes of action arising under said patent and the right to any remedies for infringement of it with respect to [REDACTED].

34. As a result of the Defendant's scan-to-file and scan-to-email functionality described in the preceding paragraphs, which are incorporated herein in their entirety, the '426 patent is directly infringed by Defendant. The infringement includes infringement of Claim 1.

Complaint

EXHIBIT C

35. As a consequence of the infringement of the '426 Patent by the aforesaid Defendant, Plaintiff is entitled to recovery of past damages in the form of, at a minimum, a reasonable royalty.

36. Defendant's conduct since at least Defendant's receipt of the first communication from Plaintiff to Defendant regarding the '426 Patent also has induced infringement and/or contributed to infringement by others. For this indirect infringement, Plaintiff also is entitled to recover damages in the form of, at a minimum, a reasonable royalty.

37. Moreover, as a consequence of the prior communication of patent rights by Plaintiff to Defendant, combined with Defendant's failure to cease and desist from further infringement in the face of the objective risk of infringement, the infringement is willful, giving rise to Plaintiff's claims for trebling of the damages in this case, as well as to Plaintiff's claims that this is a case where Defendant should reimburse Plaintiff for its attorneys' fees and other costs of litigation pursuant to 35 U.S.C. Section 285.

JURY DEMAND

38. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, CalNeb demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, CalNeb respectfully demands judgment for itself and against Defendant as follows:

- A. An adjudication that Defendant has infringed the '410 Patent;
- B. An adjudication that Defendant has infringed the '426 Patent;
- C. An award of damages to be paid by Defendant adequate to compensate CalNeb for its past infringements of the '410 and '426 Patents and any continuing or future

Complaint

EXHIBIT C

infringement through the date such judgment is entered, including interest, costs, expenses and enhanced damages for any willful infringement as justified under 35 U.S.C. § 284 and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

E. An award to CalNeb of such further relief at law or in equity as the Court deems just and proper.

Dated: January 21, 2013

Respectfully,



Farney Daniels LLP
800 S. Austin, Suite 200
Georgetown TX 78626-5845
(512) 582-2828
www.farneydaniels.com

ATTORNEYS FOR PLAINTIFF

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by Respondents that they neither admit nor deny any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent MPHJ Technology Investments, LLC, (“MPHJ”) is a Delaware limited liability company with a registered agent at 1013 Centre Road, Suite 403S, Wilmington, Delaware, 19805.
2. Respondent Jay Mac Rust is the sole member and manager of MPHJ, with his principal place of business

Decision and Order

at 510 North Valley Mills Drive, Suite 505, Waco, Texas, 76710.

3. Respondent Farney Daniels, P.C., is a Texas professional corporation with its principal office or place of business at 800 South Austin Avenue, Suite 200, Georgetown, Texas, 78626.
4. Respondents neither admit nor deny any of the allegations in the draft complaint, except as specifically stated in this agreement. Only for purposes of this action, respondents admit the facts necessary to establish jurisdiction.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Affiliate” means a person or entity with which a Respondent is associated, directly or indirectly, by a principal-agent relationship, by common control, or by a contract or business arrangement concerning a Patent that is the subject of a Patent Assertion Communication.
2. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. “Lawsuit” means any form of judicial, administrative, or private proceeding to adjudicate a dispute.
4. “Patent” shall include a patent, a patent application (including a provisional patent application), a group or portfolio of patents or patent applications, and a group

Decision and Order

or portfolio that includes one or more patents and one or more patent applications.

5. “Patent Assertion Communication” shall mean any communication in or affecting commerce, other than filings in a Lawsuit or correspondence between counsel in a Lawsuit, or communications between attorneys and clients or prospective clients for the purpose of providing or obtaining legal advice, where such communication represents, expressly or implicitly, that the intended recipient or anyone affiliated with the intended recipient is or may be infringing rights arising from a Patent, is or may be obligated to obtain a license because of a Patent, or owes or may owe compensation to another because of a Patent.
6. “Respondents” shall mean Respondent MPHJ, Respondent Rust, and Respondent Farney Daniels, individually, collectively, or in any combination.
 - a. “Respondent MPHJ” shall mean MPHJ Technology Investments, LLC, a limited liability company, and its subsidiaries, successors, and assigns.
 - b. “Respondent Rust” shall mean Jay Mac Rust, individually and as an officer of Respondent MPHJ.
 - c. “Respondent Farney Daniels” shall mean Farney Daniels, P.C., a professional corporation, and its successors and assigns.

I.**Prohibited Misleading or Unsubstantiated Representations
in Patent Assertion Communications**

IT IS ORDERED that the Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, shall not

Decision and Order

- A. Make any representation in a Patent Assertion Communication, expressly or by implication,
1. that a particular Patent has been licensed to a substantial number of licensees,
 2. that a particular Patent has been licensed at particular prices or within particular price ranges, or
 3. otherwise concerning the results of licensing, sales, settlement, or litigation of a particular Patent,
- unless the representation is non-misleading and, at the time such representation is made, Respondents possess and rely upon competent and reliable evidence sufficient to substantiate that the representation is true;
- B. Make any representation in a Patent Assertion Communication, expressly or by implication, about the licenses for a Patent or the responses of recipients of Patent Assertion Communications unless the representation is non-misleading, and, at the time the representation is made, Respondents possess and rely upon competent and reliable evidence that substantiates that the representation is true;
- C. Make any representation in a Patent Assertion Communication, expressly or by implication, that Respondents or an Affiliate have taken any action with respect to the filing of a Lawsuit, including initiating a Lawsuit, unless the representation is true and non-misleading; or
- D. Make any representation in a Patent Assertion Communication, expressly or by implication, that Respondents or an Affiliate will take any action with respect to the filing of a Lawsuit, including
1. that they will initiate a Lawsuit;
 2. that they will initiate a Lawsuit if the recipient of a Patent Assertion Communication does not agree to

Decision and Order

a license, pay compensation, or otherwise respond to the Patent Assertion Communication as requested;

3. that they will initiate a Lawsuit imminently or within a specified time; or
4. that they will initiate a Lawsuit imminently or within a specified period of time if the recipient of a Patent Assertion Communication does not agree to a license, pay compensation, or otherwise respond to the Patent Assertion Communication as requested;

unless at the time such representation is made, Respondents have decided to take such action and possess and rely upon competent and reliable evidence sufficient to substantiate that they are prepared to and able to take the action necessary to make the representation true. Evidence that an action was not taken because of a change in circumstances or information obtained subsequent to making a representation covered by this Subpart I.D, including a change in the decision by a client on whose behalf a representation was made on whether to initiate a lawsuit, shall be considered in determining whether a representation was substantiated at the time it was made.

Provided that, for purposes of Subpart I.D of this order, a statement made in a Patent Assertion Communication that Respondents

- (1) believe the recipient of the letter is or may be infringing a patent;
- (2) believe the recipient does or may need a license to a Patent; or
- (3) reserve their rights under the Patent with respect to the recipient's conduct

Decision and Order

shall not be considered, in and of itself, to be a representation that Respondents will initiate a Lawsuit.

II.
Recordkeeping Requirements

IT IS FURTHER ORDERED that each Respondent, shall, for five (5) years after the last date of dissemination of any written Patent Assertion Communication covered by Subsection II.A, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. A copy of each written Patent Assertion Communication that is authored, distributed, signed, or endorsed by Respondent or by a business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly;
- B. The names, addresses, and phone numbers of all intended recipients of each written Patent Assertion Communication;
- C. Copies of all subpoenas and other communications with law enforcement agencies or personnel concerning Patent Assertion Communications;
- D. Business records demonstrating such Respondent's compliance with the terms and provisions of this Order, including but not limited to tests, reports, studies, or other records that relate to the truth or falsity of representations about the sale of licenses for a Patent, or the responses of recipients of Patent Assertion Communications, except such Respondent need not make available records to the extent they are protected by the attorney-client privilege or the work product doctrine; and
- E. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Acknowledgements provision of this Order.

Decision and Order

III.**Order Acknowledgments**

IT IS FURTHER ORDERED that Respondents, for any business that sends Patent Assertion Communications and for which any Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, shall deliver a copy of this Order to their counsel, and all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having managerial responsibilities with respect to Patent Assertion Communications, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondents shall deliver this Order to current managerial personnel within thirty (30) days after the date of service of this Order, and to future managerial personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.**Corporate Respondents Compliance Notification**

IT IS FURTHER ORDERED that Respondent MPHJ and Respondent Farney Daniels shall notify the Commission at least thirty (30) days prior to any change in its structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in entity name or address. *Provided, however,* that, with respect to any proposed change in structure about which Respondent MPHJ or Respondent Farney Daniels learns less than thirty (30) days prior to the date such action is to take place, that respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be e-mailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600

Decision and Order

Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re MPHJ Technology Investments, LLC*.

V.**Individual Respondent Compliance Notification**

IT IS FURTHER ORDERED that Respondent Rust, for a period of ten (10) years after the date of issuance of this Order, shall notify the Commission of the discontinuance any position with Respondent MPHJ, or of his affiliation with any new business or employment involving Patent Assertion Communications. The notice shall include Respondent Rust's new business address and telephone number and, for any new business or employment involving Patent Assertion Communications, a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be e-mailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re MPHJ Technology Investments, LLC*.

VI.**Compliance Reporting**

IT IS FURTHER ORDERED that Respondents, within sixty (60) days after the date of service of this Order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VII.**Order Termination**

This Order will terminate on March 13, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

Decision and Order

violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any Respondent that is not named as a Respondent in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (the “Commission”) has accepted, subject to approval, an agreement containing a consent order from MPHJ Technology Investments, LLC; Jay Mac Rust; and Farney Daniels, P.C. (the “Respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns allegedly deceptive representations that the Respondents made in a campaign of letters sent to thousands of small businesses across the United States in an attempt to sell licenses for certain U.S. patents.¹ The complaint alleges that the Respondents made false or unsubstantiated representations in their letters that many small businesses had already agreed to pay thousands of dollars for such licenses. The complaint also alleges that the Respondents’ letters falsely represented that a patent infringement lawsuit would be filed against the recipient if it did not respond to the letter, and that this suit would be filed imminently. The complaint alleges that these representations constitute deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

The proposed consent order contains provisions designed to prevent the Respondents from engaging in similar acts and practices in the future. Section I.A of the proposed order would prohibit false or unsubstantiated representations that a patent has been licensed in substantial numbers, at particular prices, or within particular price ranges. Section I.B of the proposed order would prohibit false or unsubstantiated representations about the licenses for a patent or the responses of recipients of patent assertion communications, or concerning the results of licensing,

¹ The complaint does not challenge the right of a patentholder to seek licensing fees through truthful representations or non-deceptive conduct.

Analysis to Aid Public Comment

sales, settlement, or litigation of a patent. Section I.C would prohibit misrepresentations that the Respondents or an affiliate of the Respondents has initiated a lawsuit. And Section I.D would prohibit representations that the Respondents or an affiliate of the Respondents will initiate a lawsuit unless they have decided to take such action and they possess competent and reliable evidence sufficient to substantiate that they are prepared and able to do so. In determining whether such a representation was substantiated at the time that it was made, evidence that an action was not taken because of a change in circumstances or information obtained subsequent to making the representation shall be considered.

These prohibitions in the proposed consent order apply to communications (other than filings in a lawsuit or correspondence between counsel in a lawsuit) that state that the intended recipient or anyone affiliated with the intended recipient is or may be infringing rights arising from a patent, is or may be obligated to obtain a license because of a patent, or owes or may owe compensation to another because of a patent.

The proposed consent order also contains reporting and compliance provisions. Section II requires the Respondents to maintain and upon request make available certain compliance-related records. Sections III through VI requires the Respondents to deliver a copy of the order to officers, employees, and representatives having managerial responsibilities with respect to the order's subject matter, notify the Commission of changes in corporate structure that might affect compliance obligations, and file compliance reports with the Commission.

Section VII of the proposed order provides that, with certain exceptions, the order will terminate in twenty years.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify in any way the proposed order's terms.

Complaint

IN THE MATTER OF

**SUN PHARMACEUTICAL INDUSTRIES LTD.,
RANBAXY LABORATORIES LTD., AND DAIICHI
SANKYO CO., LTD.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

*Docket No. C-4506; File No.141 0134
Complaint, January 30, 2015 – Decision, March 18, 2015*

This consent order addresses the \$4 billion acquisition by Sun Pharmaceutical Industries Ltd. (“Sun”) of Ranbaxy Laboratories Ltd. (“Ranbaxy”). According to the FTC’s complaint, the merger would likely harm future competition by reducing the number of suppliers in the U.S. markets for three dosage strengths (50 mg, 75 mg, and 100 mg) of generic minocycline tablets. Ranbaxy is currently one of three suppliers of the products, while Sun is one of only a limited number of firms likely to sell generic minocycline tablets in the United States in the near future. As Sun’s entry likely would have resulted in significantly lower prices for these drugs, the complaint alleges that the acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act. Under the order, Sun is required to divest Ranbaxy’s interests in generic minocycline tablets to India-based Torrent Pharmaceuticals Ltd., a global drug company that markets generic drugs in the United States. Sun must also sell Ranbaxy’s generic minocycline capsules to Torrent to enable Torrent to obtain regulatory approval for its tablets as quickly as Ranbaxy would have absent the deal.

Participants

For the *Commission*: Aylin M. Skroejer, David Von Nirschl, and Elyssa L. Wenzel.

For the *Respondents*: Ronan P. Harty, Lincoln P. Mayer, and Tina D. Wang, Davis Polk & Wardwell LLP; Stacey A. Mahoney, Thane D. Scott, and Darren S. Tucker, Morgan, Lewis & Bockius LLP; Jessica K. Delbaum, Elan DiMaio, and Timothy J. Haney, Shearman & Sterling LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the