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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BALLY TECHNOLOGIES, INC.,

Plaintiff/Counter-Defendant,

v.

BUSINESS INTELLIGENCE SYSTEMS  
SOLUTIONS, INC.,

Defendant/Counter-Plaintiff.

2:10-CV-00440-PMP-GWF

ORDER

Presently before the Court is Plaintiff Bally Technologies, Inc.’s Motion for Partial Summary Judgment on BIS2’s Eighth and Eleventh Affirmative Defenses and Seventh and Eighth Counterclaims (Doc. #136), filed on December 23, 2011. Defendant Business Intelligence Systems Solutions, Inc. filed an Opposition (Doc. #142) on January 30, 2012. Plaintiff filed a Reply (Doc. #159) on February 10, 2012.

Also before the Court is Plaintiff’s Motion for Partial Summary Judgment Regarding the Issue of Patent Ownership (Doc. #137), filed December 23, 2011. Defendant filed an Opposition (Doc. #148) on January 30, 2012. Plaintiff filed a Reply (Doc. #160) on February 10, 2012.

**I. BACKGROUND**

**A. Andrew Cardno**

Andrew Cardno invented and filed patent applications for the technology at issue in this case while employed by CompuDigm International Limited (“CompuDigm”), a New Zealand corporation. (Pl.’s Mot. Partial Summ. J. Patent Ownership (Doc. #137), Ex. A ¶¶ 3, 42.) Mr. Cardno assigned some of the patent applications to CompuDigm, and

1 Compudigm later assigned its rights in the patents to Plaintiff Bally Technologies, Inc.  
2 (“Bally”). (Id. ¶ 43.) Mr. Cardno stopped working for Compudigm in 2007. (Id. ¶ 32-33.)  
3 Bruce Rowe, Bally’s senior vice president of strategy and business development, testified  
4 that Bally has “never stopped trying to clean up [the patent ownership] issues using legal or  
5 commercial avenues.” (Pl.’s Mot. Prelim. Inj. (Doc. #23), Decl. Bruce Rowe ¶ 1; Def.’s  
6 Opp’n to Mot. Partial Summ. J. Defenses & Countercls., Decl. Robert W. Busby [“Busby  
7 Decl.”] (Docs. #143-47), Ex. 2 at 117, 136.) In October 2008, Bally first became aware that  
8 Mr. Cardno was working for Defendant Business Intelligence Systems Solutions, Inc.  
9 (“BIS2”). (Busby Decl., Ex. 5 at 30-34.)

#### 10 **B. BIS2 and Teradata**

11 BIS2 is a data visualization software company, founded in 2008 and located in  
12 San Diego, California. (Def.’s Opp’n to Mot. Prelim. Inj. (Doc. #28), Ex. 6 ¶¶ 2, 5, Ex. 7  
13 ¶ 3.) Originally, BIS2 was located in Las Vegas, Nevada, but in 2008, BIS2 partnered with  
14 Teradata, a data warehousing business located in San Diego, California. (Busby Decl., Ex.  
15 1 at 18-19.) The two companies discussed developing a joint offering whereby BIS2 would  
16 design a front-end visual interface for Teradata’s data warehouse. (Id. at 31-32.) Teradata  
17 provided input into BIS2’s interface design. (Id. at 19-20.) The two companies planned to  
18 market the joint offering to about thirty customers, eight of which were existing Teradata  
19 customers; therefore, BIS2 anticipated acquiring thirty new customers through its  
20 partnership with Teradata. (Id. at 20, 73-74.) BIS2 relocated its office to San Diego,  
21 California to be close to Teradata. (Id. at 19.) In 2008, the two companies had regular,  
22 often daily, communications regarding their plans to go to market with the joint offering.  
23 (Id. at 27.)

24 In 2008, Bally also had a partnership with Teradata. (Busby Decl., Ex. 5 at 28.)  
25 In October 2008, Bally first learned of BIS2’s partnership with Teradata, but Bally did not  
26 know whether BIS2 was developing “a consulting service or an actual item” or whether

1 BIS2's "actions were directed at or had any impact on Bally." (Busby Decl., Ex. 5 at 30-37,  
2 Ex. 8 at 14, Ex. 9 at 10.)

### 3 C. Bally's Letters

4 On January 22, 2009, Mr. Rowe wrote a letter to Teradata on behalf of Bally,  
5 informing Teradata of Bally's recent acquisition of assets from Compudigm. (Pl.'s Mot.  
6 Partial Summ. J. Defenses & Countercls., Decl. Adam Yowell ["Yowell Decl.,"] (Doc.  
7 #136), Ex. C.) Mr. Rowe also stated:

8 It has been brought to our attention that Teradata and former principals  
9 of Compudigm doing business as Business Intelligence Systems  
10 Solutions (BIS2) may currently be engaged in activities both in gaming  
11 and non-gaming markets. You should also know that there have been  
12 issues between Compudigm and all three principals of BIS2, Chairman  
13 Cees Biersma, CEO Mukesh Gordhan, and CTO Andrew Cardno.  
14 Bally's intent is to protect and prosecute any parties infringing on the  
15 rights we have acquired for gaming and to grant rights outside of  
16 gaming to those that may have a commercial interest, including  
17 Teradata. We are informing you of this because we consider our  
18 relationship with you very important. As such, I would like to speak  
19 with you to determine whether there may be some mutually beneficial  
20 opportunities between our two companies and to use our joint efforts to  
21 clear up any ambiguity regarding IP rights and ownership.

22 (Id.)

23 On the same day, Mr. Rowe wrote a letter to BIS2's chairman, Cees Biersma,  
24 stating:

25 It has been brought to our attention that you may currently be  
26 undertaking activities similar to those you engaged in while you had a  
relationship with Compudigm in the gaming space. It was represented  
to us during the acquisition process that the distribution contract you  
had with Compudigm was terminated and that you had no possession  
of a saleable version of the software. We would like to confirm that  
this is in fact true and that none of the IP that you had possession or  
were exposed to is being used to create any business intelligence  
solutions for the gaming market.

(Busby Decl., Ex. 12.) Bally later stated in response to an interrogatory in this action that  
"it is not presently asserting the copying of the Compudigm source code." (Busby Decl.,  
Ex. 8 at 9.) Mr. Rowe wrote a third letter on January 22, 2009, to Mr. Cardno, requesting a

1 meeting to clear up the patent ownership issues. (Busby Decl., Ex. 13.)

2 BIS2's chief executive officer, Mukesh Gordhan, testified that in January 2009,  
3 BIS2's contacts at Teradata "suddenly all went quiet." (Yowell Decl., Ex. A at 8, 21-23.)  
4 BIS2 did not understand why Teradata stopped communicating with BIS2 in January 2009  
5 until Bally attached a copy of Mr. Rowe's January 22, 2009 letter to Teradata to its Motion  
6 for Preliminary Injunction in this action. (Id. at 21-24; Pl.'s Mot. Prelim. Inj., Ex. E.) BIS2  
7 has tried to reconnect with Teradata without any success. (Busby Decl., Ex. 1 at 78.) In  
8 November 2009, ten months after writing the letter to Teradata, Bally first came to suspect  
9 that BIS2's software was infringing the patents-in-suit. (Busby Decl., Ex. 8 at 14-15.)

10 **D. Aftermath of Bally's Letters**

11 Mr. Gordhan testified that BIS2 suffered \$10 million in damages as a result of the  
12 discontinuation of its partnership with Teradata. (Bussy Decl., Ex. 1 at 35-36.) In  
13 particular, Mr. Gordhan testified that BIS2 spent time and money developing the Teradata  
14 partnership and lost revenue from several of Teradata's customers: Sony, Vodafone,  
15 Seminole Tribe of Florida ("Seminole"), and Sky City Casino ("Sky City"). (Id. at 37, 39-  
16 40, 50, 82-84.)

17 Specifically, after Teradata went quiet, BIS2's work disappeared with Sony and  
18 Vodafone, two of Teradata's non-gaming customers. (Id. at 83-84, 101-02.) Neither Sony  
19 nor Vodafone mentioned that they were in discussions with Bally. (Id. at 101-02.) Next,  
20 although BIS2 ultimately entered into a contract with Seminole, BIS2 spent an extra year  
21 negotiating with Seminole because Seminole's IT department, namely Lyle Bell, resisted  
22 the contract. (Id. at 39-40.) After BIS2 announced its contract with Seminole, Mr. Bell told  
23 Bally executives "I'm not a happy camper," and Mr. Bell engaged in further discussions  
24 with Bally regarding Bally's products. (Busby Decl. ¶ 22, Exs. 21, 22.) Lastly, during  
25 negotiations with Sky City, the litigation between BIS2 and Bally came up and Sky City  
26 mentioned that they were in discussions with Bally. (Busby Decl., Ex. 1 at 50-52, 54-55.)

1 It is unclear from the record whether BIS2 has entered into a contract with Sky City. (See  
2 id. at 52.)

3 On March 29, 2010, Bally filed suit against BIS2 for patent infringement.  
4 (Compl. (Doc. #1).) In response, BIS2 asserted abuse of process and patent misuse as  
5 affirmative defenses. (Am. Answer (Doc. #22) ¶¶ 23, 27-30.) BIS2 also counterclaimed  
6 for intentional interference with prospective economic advantage and defamation.  
7 (Countercl. (Doc. #22) ¶¶ 19-30.) Bally now moves for summary judgment on BIS2's  
8 abuse of process and patent misuse affirmative defenses and BIS2's intentional interference  
9 with prospective economic advantage and defamation counterclaims.

## 10 **II. LEGAL STANDARD**

11 Summary judgment is appropriate “if the movant shows that there is no genuine  
12 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
13 Fed. R. Civ. P. 56(a). A fact is “material” if it might affect the outcome of a suit, as  
14 determined by the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S.  
15 242, 248 (1986). An issue is “genuine” if sufficient evidence exists such that a reasonable  
16 fact finder could find for the non-moving party. Villiarimo v. Aloha Island Air, Inc., 281  
17 F.3d 1054, 1061 (9th Cir. 2002).

18 The party “seeking summary judgment always bears the initial responsibility of  
19 informing the district court of the basis for its motion, and identifying those portions of the  
20 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
21 affidavits, if any, which it believes demonstrate the absence of a genuine issue of material  
22 fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quotation omitted). The burden  
23 then shifts to the non-moving party to go beyond the pleadings and set forth specific facts  
24 demonstrating there is a genuine issue of material fact for trial. Fairbank v. Wunderman  
25 Cato Johnson, 212 F.3d 528, 531 (9th Cir. 2000). Where a party fails to offer evidence  
26 sufficient to establish an element essential to its case, no genuine issue of material fact can

1 exist, because “a complete failure of proof concerning an essential element of the  
2 nonmoving party’s case necessarily renders all other facts immaterial.” Celotex, 477 U.S.  
3 at 322-23. The Court views all evidence in the light most favorable to the non-moving  
4 party. Cnty. of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir. 2001).

### 5 **III. DISCUSSION**

#### 6 **A. Abuse of Process and Patent Misuse**

7 BIS2 raised abuse of process and patent misuse as affirmative defenses to Bally’s  
8 patent infringement claim. In light of the Court’s Order on BIS2’s Motion for Summary  
9 Judgment of No Infringement (Doc. #128), filed concurrently with this Order, the Court  
10 will deny as moot Bally’s Motion for Partial Summary Judgment as to BIS2’s eighth (abuse  
11 of process) and eleventh (patent misuse) affirmative defenses. See Bell Atl. Network  
12 Servs., Inc. v. Covad Commc’ns Grp., 92 F. Supp. 2d 483, 498-99 (E.D. Va. 2000) (denying  
13 as moot motions for summary judgment on various affirmative defenses, including patent  
14 misuse, because the court granted the defendant’s motion for summary judgment of  
15 noninfringement).

#### 16 **B. Intentional Interference with Prospective Economic Advantage**

17 Bally argues BIS2 cannot prove its intentional interference counterclaim. In its  
18 Motion, Bally does not dispute that BIS2 had prospective contractual relationships with  
19 Teradata, Seminole, Sky City, Sony, or Vodafone. Nor does Bally dispute that it knew of  
20 these relationships.<sup>1</sup> However, Bally contends that BIS2 cannot prove Bally acted with  
21 intent to harm BIS2. Bally also asserts BIS2’s only evidence of a communication with a  
22 third party regarding the dispute with BIS2 is Bally’s letter to Teradata, and Bally argues  
23 this letter is privileged because Nevada law protects communications made to protect one’s  
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25 <sup>1</sup> Bally argues that it did not know of BIS2’s relationship with Sony or Vodafone for the first  
26 time in its Reply. The Court therefore will not consider this argument. See Zamani v. Carnes, 491  
F.3d 990, 997 (9th Cir. 2007).

1 own interests. Lastly, Bally contends that BIS2 cannot prove that Bally's letter to Teradata  
2 caused Teradata to decide not to work with BIS2 nor can BIS2 prove that Bally's letter to  
3 Teradata interfered with BIS2's relationships with the other third parties.

4 In response to Bally's argument regarding Teradata, BIS2 argues Bally intended  
5 to interfere with BIS2's partnership with Teradata to force Mr. Cardno to resolve his  
6 lingering ownership dispute with Bally. Next, BIS2 asserts that Bally's letter to Teradata is  
7 not privileged because Bally was not writing to protect its own interests, nor was Bally  
8 trying to establish or keep a customer. Lastly, BIS2 offers as evidence of causation Mr.  
9 Gordhan's testimony that in January 2009 the people that BIS2 had been working with at  
10 Teradata "suddenly all went quiet." Also, BIS2 contends when "all went quiet" between  
11 BIS2 and Teradata, BIS2 lost contracts and incurred expenses with the other third parties.

12 To prevail on a claim for intentional interference with prospective economic  
13 advantage, the plaintiff must prove:

- 14 (1) a prospective contractual relationship between the plaintiff and a  
15 third party;
- 16 (2) knowledge by the defendant of the prospective relationship;
- 17 (3) intent to harm the plaintiff by preventing the relationship;
- 18 (4) the absence of privilege or justification by the defendant; and
- 19 (5) actual harm to the plaintiff as a result of the defendant's conduct.

20 Wichinsky v. Mosa, 847 P.2d 727, 729-30 (Nev. 1993). The standard for causation under  
21 Nevada law is unclear. But, Nevada adopted its test for intentional interference with  
22 prospective economic advantage from California. See Leavitt v. Leisure Sports  
23 Incorporation, 734 P.2d 1221, 1225 (Nev. 1987) (citing Buckaloo v. Johnson, 537 P.2d 865,  
24 872 (Cal. 1975)). Under California law, a plaintiff must prove "damages to the plaintiff  
25 proximately caused by the acts of the defendant." Buckaloo, 537 P.2d at 872; see also  
26 Marsh v. Anesthesia Serv. Med. Grp., Inc., 132 Cal. Rptr. 3d 660, 679-80 (Cal. Ct. App.  
2011). The defendant's conduct is the proximate cause of the plaintiff's harm if the  
plaintiff would have been awarded the contract but for the defendant's interference. Korea

1 Supply Co. v. Lockheed Martin Corp., 63 P.3d 937, 958 (Cal. 2003). The defendant’s  
2 conduct must be a substantial factor in bringing about the plaintiff’s injury. Franklin v.  
3 Dynamic Details, Inc., 10 Cal. Rptr. 3d 429, 441 (Cal. Ct. App. 2004).

4           The Nevada Supreme Court’s approach to causation in Wichinsky is consistent  
5 with California’s proximate causation requirement. In Wichinsky, the Nevada Supreme  
6 Court vacated the arbitrator’s finding that the defendant intentionally interfered with the  
7 plaintiff’s economic advantage because the plaintiff failed to prove intent, causation, and  
8 damages. 847 P.2d at 730. The plaintiff offered evidence that the defendant contacted the  
9 plaintiff’s prospective buyer and sometime thereafter the buyer reduced its offer. Id. But,  
10 the plaintiff admitted that the reduced offer may have been attributable to an unrelated  
11 reason, and the prospective buyer testified that it reduced its offer for unrelated reasons and  
12 the defendant did nothing to hinder the sale. Id. Accordingly, the Nevada Supreme Court  
13 concluded that the record did not reflect actual harm resulting from the defendant’s  
14 conduct. Id.

15           Assuming without deciding that BIS2 offers proof of the first four elements of its  
16 intentional interference counterclaim, BIS2 fails to offer evidence of actual harm as a result  
17 of Bally’s letter to Teradata. Specifically, BIS2 offers no evidence that Bally’s letter was a  
18 substantial factor in Teradata’s decision to discontinue its partnership with BIS2. In fact,  
19 BIS2 offers no evidence at all of Teradata’s decision-making process. BIS2 could have  
20 deposed Teradata to find out why it decided to discontinue its partnership with BIS2.  
21 Instead, BIS2 offers only Mr. Gordhan’s testimony that in January 2009, BIS2’s contacts at  
22 Teradata “suddenly all went quiet.” (Yowell Decl., Ex. A at 8, 21-23.) Similarly, BIS2  
23 offers no evidence that Bally’s letter was a substantial factor in Sony’s or Vodafone’s  
24 decision to refrain from entering into a contract with BIS2. The status of BIS2’s contract  
25 with Sky City is unknown, and Seminole entered into a contract with BIS2.

26           Because BIS2 fails to offer proof of an essential element of its



1 counterclaim—actual harm as a result of Bally’s letter to Teradata—no genuine issue of  
2 material fact remains as to BIS2’s intentional interference with prospective economic  
3 advantage counterclaim. Therefore, the Court will grant Bally’s Motion for Partial  
4 Summary Judgment on this issue.

### 5 **C. Defamation/Business Disparagement**

6 Bally argues BIS2 cannot prove its defamation counterclaim. In its Motion, Bally  
7 contends that in the business context, the applicable tort is business disparagement.<sup>2</sup> Next,  
8 Bally asserts that its letter to Teradata does not imply that BIS2 stole source code, nor does  
9 the letter include any false statements about BIS2’s products and services. Bally also  
10 argues BIS2 cannot prove the letter was unprivileged and published; intent, knowledge of  
11 falsity, or reckless disregard for the truth; or that the letter proximately caused harm to  
12 BIS2.

13 BIS2 responds that Bally’s letters to Teradata, Mr. Biersma, and Mr. Cardno  
14 constitute false and disparaging statements because Bally accused BIS2 of stealing source  
15 code and infringing on its patents. BIS2 offers as evidence of falsity and malice Bally’s  
16 admission that it had no reason to suspect BIS2 was infringing at the time it wrote the letter  
17 and Bally’s decision to drop its stolen source code accusations. Next, BIS2 argues the  
18 letters were unprivileged and published. Lastly, BIS2 contends the letters proximately  
19 caused harm to BIS2 in the form of about \$10 million in damages because Teradata  
20 suddenly went quiet after receiving Bally’s letter.

21 To prevail on a business disparagement claim, a plaintiff must prove: “(1) a false  
22 and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice,  
23 and (4) special damages.” Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc., 213 P.3d  
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25 <sup>2</sup> BIS2 does not dispute Bally’s characterization of its defamation counterclaim as a business  
26 disparagement counterclaim, nor does BIS2 dispute the standard that should apply. As such, the Court  
will treat this counterclaim as a business disparagement counterclaim.

1 496, 504 (Nev. 2009). Publication is the communication of a statement to a third party.

2 M & R Inv. Co. v. Mandarino, 748 P.2d 488, 491 (Nev. 1987).

3           Additionally, a plaintiff must prove special damages by establishing that the  
4 defendant’s disparaging statement proximately caused the plaintiff’s economic loss. Id. at  
5 505. The plaintiff can do so by showing “the loss of specific sales attributable to the  
6 disparaging statement” or a general decline in business. Id. The loss of a specific sale is  
7 attributable to the disparaging statement if the statement was a “substantial factor in  
8 determining the conduct of third persons which brings about the loss.” Restatement  
9 (Second) Torts § 632; see also Hurlbut v. Gulf Atl. Life Ins. Co., 749 S.W.2d 762, 767  
10 (Tex. 1987) (“[T]he communication must play a substantial part in inducing others not to  
11 deal with the plaintiff.”). A customer may consider a number of factors in deciding whether  
12 to break a contract or refrain from entering into a contract. Restatement (Second) Torts  
13 § 632 cmt. c. “If, however, the publication of the disparaging matter is one of the  
14 considerations that has substantial weight, the publication of the disparaging matter is a  
15 substantial factor in preventing the sale and thus bringing financial loss upon the owner of  
16 the thing in question.” Id.

17           Time and money spent counteracting a disparaging statement cannot satisfy the  
18 special damages element of a business disparagement claim. Advanced Training Sys. v.  
19 Caswell Equip. Co., 352 N.W.2d 1, 7-8 (Minn. 1984) (cited by Virtual Educ. Software, Inc.,  
20 213 P.3d at 505). “Efforts to mitigate damages in tort are not compensable unless plaintiff  
21 proves a tort, and where special damages are an essential element of plaintiff’s action, they  
22 must be proved before mitigation expenses may be considered.” Id. at 8.

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1           Assuming without deciding that BIS2 offers proof of the first three elements of  
2 its business disparagement counterclaim, BIS2 fails to offer evidence of special damages  
3 proximately caused by Bally's letter to Teradata.<sup>3</sup> As discussed above, BIS2 offers no  
4 evidence that Bally's letter was a substantial factor in Teradata's decision to discontinue its  
5 partnership with BIS2, nor does BIS2 offer evidence that Bally's letter was a substantial  
6 factor in Sony's or and Vodafone's decision to refrain from entering into a contract with  
7 BIS2. The status of BIS2's contract with Sky City is unknown, and Seminole entered into a  
8 contract with BIS2. To the extent BIS2 argues its special damages include the time and  
9 money spent counteracting Bally's letter to Teradata, such losses cannot satisfy the special  
10 damages element of BIS2's business disparagement counterclaim. BIS2 first must establish  
11 every element of its business disparagement counterclaim, and then BIS2 may present  
12 evidence of its efforts to mitigate damages.

13           Because BIS2 fails to offer proof of an essential element of its  
14 counterclaim—special damages proximately caused by Bally's letter to Teradata—no  
15 genuine issue of material fact remains as to BIS2's business disparagement counterclaim.  
16 Therefore, the Court will grant Bally's Motion for Partial Summary Judgment as to BIS2's  
17 defamation (business disparagement) counterclaim.

#### 18           **D. Patent Ownership**

19           BIS2 moves for partial summary judgment on the issue of patent ownership.  
20 Bally argues no genuine issues of material fact remain as to patent ownership because the  
21 doctrines of claim preclusion and law of the case apply. BIS2 responds to Bally's claim  
22 preclusion and law of the case arguments, but BIS2 also argues that Bally's Motion for  
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25           <sup>3</sup> Bally published the allegedly false and disparaging statements about BIS2 by sending its  
26 letter to Teradata, a third party. Because BIS2 does not offer evidence that Bally's letters to BIS2  
executives, Mr. Biersma and Mr. Cardno, were sent to a third party, the only publication at issue in this  
action is Bally's letter to Teradata.

1 Partial Summary Judgment is really a motion in limine to preclude the admission of  
2 evidence regarding the ownership dispute at trial. BIS2 contends that the facts surrounding  
3 the ownership dispute between Bally and Mr. Cardno are relevant to several claims,  
4 defenses, and counterclaims.

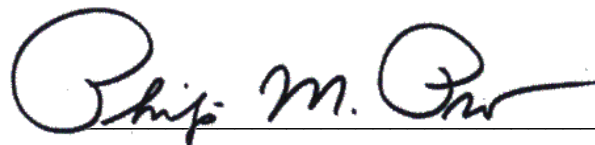
5 In light of the Court's rulings in this Order and the Court's Order filed  
6 concurrently with this Order, no claims, defenses, or counterclaims remain in dispute.  
7 Therefore, the Court will deny as moot Bally's Motion for Partial Summary Judgment  
8 Regarding the Issue of Patent Ownership.

9 **IV. CONCLUSION**

10 IT IS THEREFORE ORDERED that Plaintiff Bally Technologies, Inc.'s Motion  
11 for Partial Summary Judgment on BIS2's Eighth and Eleventh Affirmative Defenses and  
12 Seventh and Eighth Counterclaims (Doc. #136) is hereby GRANTED in part and DENIED  
13 in part. The Motion is granted as to Defendant Business Intelligence Systems Solutions,  
14 Inc.'s seventh (intentional interference with prospective economic advantage) and eighth  
15 (defamation) counterclaims. The Motion is denied as moot as to Defendant's eighth (abuse  
16 of process) and eleventh (patent misuse) affirmative defenses.

17 IT IS FURTHER ORDERED that Plaintiff's Motion for Partial Summary  
18 Judgment Regarding the Issue of Patent Ownership (Doc. #137) is hereby DENIED as  
19 moot.

20  
21 DATED: August 23, 2012



22  
23 PHILIP M. PRO  
24 United States District Judge  
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26