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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EXCELSIOR TECHNOLOGY, INC.,  
et al.,  
  
Plaintiffs,  
  
v.  
  
PAPST LICENSING GMBH & CO. KG,  
  
Defendant.

No. C 09-2055 PJH

**ORDER GRANTING MOTION  
TO DISMISS**

The motion of defendant Papst Licensing GmbH & Co. KG ("Papst") for an order dismissing the complaint in the above-entitled action for lack of subject matter jurisdiction and for failure to state a claim came on for hearing before this court on October 21, 2009. Plaintiffs Excelstor Technology, Inc., Excelstor Technology Limited, Excelstor Group Limited, Excelstor Great Wall Technology Limited, and Shenzhen Excelstor Technology Limited (collectively, "Excelstor") appeared by their counsel Kenneth B. Wilson. Papst appeared by its counsel Leonard Friedman.

Having read the parties' papers and carefully considered their arguments, and good cause appearing, the court hereby GRANTS the motions for the reasons stated at the hearing. The dismissal is WITH LEAVE TO AMEND. Excelstor shall file the amended complaint no later than November 20, 2009. Papst shall file its response no later than 20 days after the filing of the amended complaint.

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The parties shall meet and confer regarding jurisdictional discovery, and shall submit a stipulated proposed order setting forth a briefing schedule for either a motion addressing both subject matter jurisdiction/failure to state a claim, and personal jurisdiction, or (if they find it necessary to conduct jurisdictional discovery) two separate motions, one addressing subject matter jurisdiction/failure to state a claim, and the other addressing personal jurisdiction. The court will reschedule the initial case management conference after the jurisdictional questions have been resolved.

**IT IS SO ORDERED.**

Dated: October 23, 2009



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PHYLLIS J. HAMILTON  
United States District Judge