1 PERRY R. CLARK, State Bar No. 197101
   LAW OFFICES OF PERRY R. CLARK
2 825 San Antonio Road
   Palo Alto, CA 94303
3 Telephone: (650) 248-5817
   Facsimile: (650) 618-8533
4 perry@perryclarklaw.com
   Attorney for Plaintiff
5 PETROLIAM NASIONAL BERHAD (PETRONAS)

6

7

8   UNITED STATES DISTRICT COURT
                  NORTHERN DISTRICT OF CALIFORNIA
9   OAKLAND DIVISION

10

11 PETROLIAM NASIONAL BERHAD   CASE NO: 09-CV-5939 PJH (MEJ)
    (PETRONAS),
12 Plaintiff,   Noticed Hearing Date: May, 16, 2012
                                         Noticed Hearing Time: 9:00 a.m.
13 vs.
                                         DECLARATION OF PERRY CLARK IN
14 GODADDY.COM, INC.,   SUPPORT OF MOTION UNDER FED. R.
    Defendant.   CIV. P. 54(D)(1) FOR THE COURT TO
15   REVIEW THE CLERK'S ACTION
                                         TAXING COSTS
16

17

18

19

20

21

22

23

24

25

26

27

28
    CLARK DECL. ISO MOT. UNDER FRCP 54(D)(1) FOR
    COURT TO REVIEW CLERK'S ACTION TAXING COSTS
    Case No. 09-CV-5939 PJH (MEJ)

I, Perry Clark, declare:

1. I am an attorney admitted to practice law before this Court and the attorney for Plaintiff Petroliam Nasional Berhad (PETRONAS). I have personal knowledge of the facts set forth in this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts of the transcript of the December 7, 2011 hearing in this Court on the parties' motions for summary judgment.

3. Attached hereto as Exhibit B is a true and correct copy of eNom's Motion for Leave to File an *Amicus* Brief (Doc. No. 111) in this case.

4. Attached hereto as Exhibit C is a true and correct copy of Network Solutions's Motion for Leave to File an *Amicus* Brief (Doc. No. 125) in this case.

5. Attached hereto as Exhibit D is a true and correct copy of the Court's Summary Judgment Order (Doc. No. 158).

6. Attached hereto as Exhibit E is a true and correct copy of GoDaddy's Bill of Costs (Doc. No. 175) in this case.

7. Attached hereto as Exhibit F is a true and correct copy of Exhibit B to GoDaddy's Bill of Costs (Doc. No. 175-2).

8. Attached hereto as Exhibit G is a true and correct copy of Ex. C to GoDaddy's Bill of Costs (Doc. No. 175-3).

9. Attached hereto as Exhibit H is a true and correct copy of portions of the transcript of the October 13, 2011 deposition of Ronald Hertz.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Palo Alto, California on April 11, 2012.

By: _____*/s/ Perry Clark*_____
Perry Clark

1

CLARK DECL. ISO MOT. UNDER FRCP 54(D)(1) FOR
COURT TO REVIEW CLERK'S ACTION TAXING COSTS
Case No. 09-CV-5939 PJH (MEJ)

Ex. A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

PETROLIUM NASIONAL BERHAD,   )
)
)
            PLAINTIFF,   )   NO. C-C-09-5939 PJH
)
  VS.   )   WEDNESDAY, DECEMBER 7, 2011
)
GODADDY.COM, INC.   )   OAKLAND, CALIFORNIA
)
            DEFENDANT.   )
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: LAW OFFICE OF PERRY R. CLARK
                            825 SAN ANTONIO ROAD
                            PALO ALTO, CALIFORNIA 94303
                     BY: PERRY R. CLARK, ESQUIRE

FOR DEFENDANT: WILSON, SONSINI GOODRICH & ROS
                            650 PAGE MILL ROAD
                            PALO ALTO, CALIFORNIA 94304
                     BY: JOHN L. SLAFSKY, ESQUIRE

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
                            OFFICIAL COURT REPORTER

1	<u>WEDNESDAY, DECEMBER 7, 2011</u> <u>10:25 A.M.</u>
2	P R O C E E D I N G S
3	**THE CLERK:** CALLING CIVIL CASE NUMBER 09-5939
4	PETROLIAM NASIONAL BERHAD VERSUS GODADDY.COM.
5	**MR. SLAFSKY:** GOOD MORNING, YOUR HONOR. FOR THE
6	DEFENDANT GODADDY, JOHN SLAFSKY FROM WILSON, SONSINI, GOODRICH
7	& ROSATI.
8	**THE COURT:** ALL RIGHT. GOOD MORNING.
9	**MR. CLARK:** GOOD MORNING, YOUR HONOR. PERRY CLARK
10	FOR THE PLAINTIFF.
11	**THE COURT:** ALL RIGHT. GOOD MORNING.
12	ALL RIGHT. THIS MATTER IS ON FOR HEARING ON THE
13	CROSS-MOTIONS FOR SUMMARY JUDGMENT.
14	THE DEFENDANT GODADDY HAS MOVED FOR JUDGMENT AS TO
15	ALL THREE OF THE PLAINTIFF'S CLAIMS AND ON ITS OWN
16	COUNTERCLAIM?
17	**MR. SLAFSKY:** THAT'S CORRECT, YOUR HONOR.
18	**THE COURT:** AND PLAINTIFF PETRONAS HAS MOVED FOR
19	SUMMARY JUDGMENT ON ITS OWN SECOND CLAIM FOR CONTRIBUTORY
20	CYBERSQUATTING. SO LET'S DEAL WITH THE DIRECT CYBERSQUATTING
21	CLAIM AND THEN THE CONTRIBUTORY CYBERSQUATTING CLAIM.
22	IT'S -- WITH REGARD TO THE UNFAIR COMPETITION CLAIM,
23	I AM PROBABLY GOING TO GRANT SUMMARY JUDGMENT GIVEN THERE WAS
24	NO OPPOSITION IN THE PAPERS FILED BY PETRONAS AT ALL.
25	WITH REGARD TO THE COUNTERCLAIM THAT'S BEEN

1   THINGS THAT SOUNDS EXCEPTIONAL. AND IT IS. BUT THE FACTS IN

2   THIS CASE ARE EXCEPTIONAL AS WELL.

3   AGAIN, THIS ISN'T A CASE WHERE SOMEBODY REGISTERS A

4   DOMAIN NAME AND WE COMPLAINED ABOUT IT. REMEMBER -- AND

5   THERE'S ALL THESE FACTS, THE COURT'S ORDERS, THE PENDING

6   LITIGATION, THE UNDISPUTED FACTS I JUST DESCRIBED OF THEIR

7   KNOWLEDGE OF THE REGISTRANT'S BAD FAITH INTENT, THE UNDISPUTED

8   FACTS OF ALL THE OTHER ASPECTS NEEDED TO PROVE THE REGISTRANT'S

9   CYBERSQUATTING. SO I THINK IT DOES REACH THE EXCEPTIONAL

10   LEVEL.

11   THE FINAL POINT I WOULD MAKE IS ON WILLFUL

12   BLINDNESS. AND ON WILLFUL BLINDNESS, THERE'S REALLY NO --

13   THERE'S NO ARGUMENT TO SHOW WHY THEY SHOULDN'T HAVE AT LEAST

14   SUSPECTED THAT THERE WAS SOMETHING GOING ON. I MEAN, UNDER

15   THESE CIRCUMSTANCES --

16   **THE COURT:** SO IS WILLFUL BLINDNESS A TEST SET FORTH

17   BY CIRCUIT AUTHORITY, OR IS THAT --

18   **MR. CLARK:** RIGHT, BY THE NINTH CIRCUIT.

19   **THE COURT:** BY THE NINTH CIRCUIT IN A CONTRIBUTORY

20   CYBERSQUATTING -- I THOUGHT THE NINTH CIRCUIT HADN'T RULED

21   ON --

22   **MR. CLARK:** NO, NO. YOU'RE RIGHT. THERE'S NO NINTH

23   CIRCUIT CASE SAYING --

24   **THE COURT:** IS THERE ANY CIRCUIT CASE AT ALL SAYING

25   THAT CYBERSQUATTING CAN BE FOUND IN A SITUATION WHERE THERE IS

1   WILLFUL BLINDNESS?

2   **MR. CLARK:** NO, THERE'S NOT.

3   **THE COURT:** EITHER DIRECT OR CONTRIBUTORY?

4   **MR. CLARK:** NO, THERE'S NOT.

5   **THE COURT:** OKAY. THE WILLFUL BLINDNESS COMES UP IN

6   THE CONTEXT OF CONTRIBUTORY CYBERSQUATTING ONLY, CORRECT?

7   **MR. CLARK:** CONTRIBUTORY TRADEMARK INFRINGEMENT

8   ONLY.

9   **THE COURT:** I'M SORRY, CONTRIBUTORY TRADEMARK

10   INFRINGEMENT ONLY.

11   **MR. CLARK:** YES.

12   **THE COURT:** LET ME ASK BOTH OF YOU TO ADDRESS ONE

13   CONCERN THAT I HAVE. GIVEN THAT THERE ISN'T AN ESTABLISHED

14   CAUSE OF ACTION FOR CONTRIBUTORY CYBERSQUATTING, GIVEN THAT WE

15   DIDN'T DEAL WITH THIS DIRECTLY ON A PRIOR MOTION TO DISMISS, I

16   HAVE NO IDEA WHAT YOUR ANSWER IS TO THIS AMENDED COMPLAINT; I

17   AM HAVING REAL DIFFICULTY TRYING TO FIGURE OUT WHAT I AM

18   SUPPOSED TO DO WITH THIS CAUSE OF ACTION.

19   IT SEEMS INHERENTLY INAPPROPRIATE TO ME, A TRIAL

20   JUDGE, TO DECIDE THAT, YES, THERE IS, NOT AT THE PLEADING

21   STAGE, BUT TO DECIDE AT THE SUMMARY JUDGMENT STAGE THAT AS A

22   MATTER OF LAW THERE IS SUCH A THING AS CYBERSQUATTING, WHICH

23   SOME OTHER -- WHICH THE STATUTE DOESN'T PROVIDE AND WHICH AN

24   APPELLATE COURT HASN'T PROVIDED -- I AM NOT IN THE BUSINESS OF

25   CREATING NEW LAW, THAT IT SEEMS INHERENTLY INAPPROPRIATE FOR ME

1   TO FIND THAT IT DOES EXIST.

2   SOME OTHER DISTRICT COURTS HAVE RECOGNIZED IT AT

3   LEAST AT THE PLEADING STAGE, HAVE NOT BEEN WILLING TO SAY IT

4   DOESN'T EXIST, WELL, I AM NOW AT THE SUMMARY JUDGMENT STAGE AND

5   I AM NOT WILLING TO SAY THAT IT DOES EXIST.

6   IF I FIND THAT IT DOES NOT EXIST AS A CAUSE OF

7   ACTION AS WE KNOW IT TODAY, AND IF I AM UNWILLING TO CREATE

8   ONE, WHAT DOES THAT LEAVE US WITH? YOU PLED CONTRIBUTORY

9   INFRINGEMENT PREVIOUSLY, IT WAS DISMISSED, YOU WERE GIVEN LEAVE

10   TO AMEND, YOU DIDN'T AMEND TO RE-ALLEGE CONTRIBUTORY TRADEMARK

11   INFRINGEMENT, IT DOESN'T EXIST IN THE COMPLAINT, SO WHAT DO I

12   DO WITH THIS?

13   YOU DEVOTED ALL THIS TIME TALKING ABOUT THIS CAUSE

14   OF ACTION IN YOUR PAPERS THAT IT DOESN'T EXIST, IN MY VIEW.

15   **MR. CLARK:** WELL, THEN, THE CAUSE OF ACTION -- YOU

16   WOULD HAVE TO DISMISS IT AS A MATTER OF LAW. BECAUSE THAT IS

17   THE CAUSE OF ACTION.

18   AND WHERE -- I THINK WHAT WE WOULD SAY FOR WHY IT

19   EXISTS, THERE IS A NUMBER OF PLACES WE WOULD POINT, THE FIRST

20   OF WHICH THE MERE FACT IT IS NOT LISTED IN THE STATUTE, ISN'T

21   DISPOSITIVE BECAUSE CONTRIBUTORY TRADEMARK INFRINGEMENT ALSO

22   ISN'T LISTED IN THE STATUTE.

23   **THE COURT:** THERE ARE CIRCUIT CASES THAT ESTABLISH,

24   INCLUDING IN THE NINTH CIRCUIT, CONTRIBUTORY TRADEMARK

25   INFRINGEMENT. CORRECT?

1   **MR. CLARK:** CORRECT.

2   **THE COURT:** OKAY. BUT THERE ISN'T ANY CIRCUIT COURT

3   CASE, OR IS THERE A FINDING FOLLOWING TRIAL IN A DISTRICT

4   COURT? HAS ANYBODY EVER BEEN FOUND LIABLE IN THE UNITED STATES

5   FOR CONTRIBUTORY CYBERSQUATTING?

6   **MR. CLARK:** HERE IS WHAT I WOULD SAY IS, IF YOU LOOK

7   AT THE LEGISLATIVE HISTORY FOR THE ACT, THE ACT WAS PASSED IN

8   2000, IT SAYS THAT THE BILL, AS AMENDED, PROMOTES THE CONTINUED

9   EASE AND EFFICIENCY USERS OF THE CURRENT REGISTRATION SYSTEM

10 ENJOY BY CODIFYING CURRENT CASE LAW LIMITING THE SECONDARY

11 LIABILITY OF DOMAIN NAME REGISTRARS AND REGISTRIES FOR THE ACT

12 OF REGISTRATION.

13   THEN THEY CITE TO TWO NINTH CIRCUIT CASES AND A

14 DISTRICT COURT CASE. OKAY. SO, WHAT I WOULD SAY IS, YOU KNOW

15 IN THE TEN YEARS THAT THE ACT HAS BEEN IN --

16   **THE COURT:** THAT IS THE ACT OF REGISTRATION, WHICH

17 YOU SAY THIS CASE ISN'T ABOUT.

18   **MR. CLARK:** OKAY. TO BE CLEAR, WHAT THEY'RE TALKING

19 ABOUT HERE IS THEY'RE SAYING WE ARE CREATING A SAFE HARBOR FROM

20 LIABILITY FOR SECONDARY INFRINGEMENT, WHICH CONTRIBUTORY

21 INFRINGEMENT IS, RIGHT? CONTRIBUTORY INFRINGEMENT IS SECONDARY

22 LIABILITY.

23   AND WHAT THEY ARE SAYING HERE IS, WE ARE CREATING A

24 SAFE HARBOR, WE'RE LIMITING LIABILITY FOR SECONDARY

25 LIABILITY -- FOR THE ACT OF REGISTRATION. SO IF A SECONDARY

1   LIABILITY DID NOT EXIST, IF THIS CAUSE OF ACTION DID NOT EXIST,

2   CONGRESS WOULDN'T HAVE SAID THIS.

3   THE COURT: SO CONGRESS KNOWS IT EXISTS EVEN THOUGH

4   THE STATUTE DOESN'T AND THE APPELLATE COURTS DON'T.

5   MR. CLARK: RIGHT. AND I WOULD JUST ADD THE CASES

6   THEY CITE, THEY CITE TO PANAVISION, WHICH IS A NINTH CIRCUIT

7   CASE THAT PREDATES THE ACPA. SO, I GUESS TO BE A HUNDRED

8   PERCENT PRECISE --

9   THE COURT: PANAVISION IS A DIRECT INFRINGEMENT

10   CASE.

11   MR. CLARK: CONTRIBUTORY INFRINGEMENT, BUT BEFORE

12   THE ACPA.

13   MR. SLAFSKY: PANAVISION VERSUS TOEPPEN IS A

14   CYBERSQUATTING CASE, DIRECT CYBERSQUATTING CASE.

15   THE COURT: THAT'S WHAT I THOUGHT.

16   MR. CLARK: THEY CITE IT HERE FOR CODIFYING CURRENT

17   CASE LAW LIMITING SECONDARY LIABILITY.

18   SO, IF SECONDARY LIABILITY DOESN'T EXIST, IF WE ARE

19   GOING TO COME OUT AND SAY SECONDARY LIABILITY DOESN'T EXIST, I

20   THINK OUR RESPONSE WOULD BE TO SAY, LOOK, IF THAT WERE TRUE,

21   THEN CONGRESS WOULDN'T HAVE MADE AN EXCEPTION FOR SECONDARY

22   LIABILITY FOR THE ACT OF REGISTRATION.

23   THE COURT: OKAY. SO, YOU'RE SAYING I SHOULD INFER

24   FROM THE CREATION OF THE SAFE HARBOR PROVISION THAT IT DOES

25   EXIST, BUT NO ONE HAS ESTABLISHED THE REQUIREMENTS OF -- EXCEPT

1   FOR OTHER DISTRICT COURTS?

2   **MR. CLARK:** AGAIN, I THINK THEY ARE NOT SEEING THE

3   PROBLEM BECAUSE, AGAIN, THE CAUSE OF ACTION FOR CONTRIBUTORY

4   TRADEMARK INFRINGEMENT ISN'T IN THE STATUTE EITHER. AND

5   CYBERSQUATTING IS A FORM OF TRADEMARK INFRINGEMENT.

6   SO I AM NOT SURE I AM SEEING THE PROBLEM OF SAYING

7   THERE CAN BE CONTRIBUTORY CYBERSQUATTING, WHICH IS PART OF THE

8   TRADEMARK STATUTE JUST LIKE THERE CAN BE CONTRIBUTORY TRADEMARK

9   STATUTE INFRINGEMENT --

10   **THE COURT:** BUT YOU ARE ARGUING TWO DIFFERENT

11   STANDARDS. YOU ARE NOT ARGUING THE CONTRIBUTORY TRADEMARK

12   INFRINGEMENT STANDARD, YOU ARE ARGUING CONTRIBUTORY

13   CYBERSQUATTING AS THE STANDARD, AND NO COURT HAS SET FORTH WHAT

14   THE ELEMENTS ARE.

15   **MR. CLARK:** WELL, OKAY. WHAT COURTS HAVE SET FORTH

16   ARE THE STANDARD FOR -- THE STANDARDS FOR CONTRIBUTORY

17   TRADEMARK INFRINGEMENT. AND ONE OF THE REQUIREMENTS FOR

18   CONTRIBUTORY TRADEMARK INFRINGEMENT IS THE DIRECT TRADEMARK

19   INFRINGEMENT.

20   HERE, THE DIFFERENCE BETWEEN CONTRIBUTORY

21   CYBERSQUATTING AND CONTRIBUTORY TRADEMARK INFRINGEMENT IS THE

22   DIRECT INFRINGEMENT THAT NEEDS TO BE PROVEN, HERE, DIRECT PROOF

23   OF CYBERSQUATTING -- I'M SORRY. PROOF OF DIRECT CYBERSQUATTING

24   AND FOR CONTRIBUTORY TRADEMARK INFRINGEMENT, PROOF OF DIRECT

25   TRADEMARK INFRINGEMENT.

1   I MEAN, I GUESS I AM NOT SEEING -- THERE'S NOTHING

2   IN THE STATUTE WHERE THEY CAME IN AND SAY, LET'S JUST GET RID

3   OF SECONDARY LIABILITY, WE KNOW IT APPLIES TO TRADEMARK

4   INFRINGEMENT IN GENERAL, BUT FOR THIS, THIS PART OF THE

5   TRADEMARK STATUTE, THIS FORM OF TRADEMARK INFRINGEMENT THAT WE

6   ARE ENACTING, LET'S NOT HAVE SECONDARY LIABILITY. THEY SAY,

7   THEY RECOGNIZE SECONDARY LIABILITY EXISTS AND CREATE A SAFE

8   HARBOR.

9   SO I THINK -- LET ME PUT IT ANOTHER WAY. NO COURT

10 IN THE COUNTRY HAS COME OUT AND SAID IT DOESN'T EXIST. OTHER

11 DISTRICT COURTS HAVE SAID IT DOES.

12   **MR. SLAFSKY:** YOUR HONOR, IN ANSWER TO YOUR

13 QUESTION, I'VE LOOKED INTO THIS, I DON'T BELIEVE ANY DEFENDANT

14 HAS EVER BEEN HELD LIABLE FOR CONTRIBUTORY CYBERSQUATTING. I

15 THINK THE ONLY CASES THAT HAVE LOOKED AT IT HAVE BEEN THESE FEW

16 DISTRICT COURT DECISIONS AT THE PLEADING STAGE.

17   OUR VIEW IS THAT IF CONGRESS HAD WANTED TO CREATE

18 THIS CAUSE OF ACTION, THEY COULD HAVE. THERE ARE RICH EXAMPLES

19 IN THE LEGISLATIVE HISTORY OF CONGRESS' DESIRE TO LIMIT, AS

20 MR. CLARK SAYS, SECONDARY LIABILITY AND THE STATUTE THAT WAS

21 CREATED HAS ALL OF THESE PROVISIONS LIMITING, LIMITING,

22 LIMITING LIABILITY FOR THE SERVICE PROVIDERS. SO I HAVE A HARD

23 TIME INFERRING FROM THAT THAT THEY AT THE SAME TIME

24 AFFIRMATIVELY WANTED TO EXPAND THE LAW BUT DIDN'T SAY IT BY

25 CREATING A SEPARATE CAUSE OF ACTION.

1   **THE COURT:** WHAT ABOUT MR. CLARK'S ARGUMENT, THOUGH,

2   THAT THE SECONDARY LIABILITY WAS FOR TRADEMARK INFRINGEMENT --

3   DIRECT INFRINGEMENT WAS NOT CODIFIED EITHER BUT HAS BEEN

4   CREATED.

5   **MR. SLAFSKY:** SO, SECONDARY TRADEMARK INFRINGEMENT,

6   INDEED, IS JUDGE MADE LAW. IT'S NOT IN THE LANHAM ACT. AND SO

7   THAT IS THE HISTORICAL BACKDROP TO THIS STATUTE.

8   AND AS WE HAVE SAID IN OUR PAPERS, YOUR HONOR, TO

9   THE EXTENT THE COURT THINKS IT'S APPROPRIATE TO APPLY THOSE

10   TRADITIONAL PRINCIPALS TO THIS NEW CONTEXT OF CYBERSQUATTING,

11   IT STILL DOESN'T MATTER AT THE END OF THE DAY BECAUSE THEY

12   CAN'T BE SATISFIED HERE.

13   **THE COURT:** RIGHT. BUT I STILL HAVEN'T DECIDED

14   WHETHER OR NOT I SHOULD EVEN DO THAT.

15   THIS IS A, IT SEEMS TO ME, A PRETTY IMPORTANT CASE

16   AND THE POLICY ISSUES ARGUED BY BOTH SIDES ARE PRETTY

17   SIGNIFICANT. I AM NOT SO SURE THAT'S THE ROLE OF A TRIAL JUDGE

18   TO CREATE NEW LAW, A WHOLE NEW CAUSE OF ACTION TO ACKNOWLEDGE

19   THE EXISTENCE OF A CAUSE OF ACTION THAT HAS NOT BEEN SAID TO

20   EXIST BY LAW OR BY ANY COURT OF APPEAL, WHICH IS MORE IN THE

21   HABIT OF TELLING US WHAT THE LAW IS.

22   **MR. CLARK:** BUT, AGAIN, IN MAKING THAT DECISION,

23   THERE WOULD BE NO AUTHORITY TO CITE. WOULD THERE BE A CASE TO

24   CITE TO SAY THAT THERE IS NO CONTRIBUTORY CYBERSQUATTING? ARE

25   THERE ANY CASES --

1   **THE COURT:** I WOULD SAY THAT YOU HAVEN'T CITED ANY

2   AUTHORITY FOR THE EXISTENCE OF CONTRIBUTORY CYBERSQUATTING --

3   **MR. CLARK:** OTHER THAN --

4   **THE COURT:** -- OTHER THAN OTHER DISTRICT COURTS OUT

5   OF THE NINTH CIRCUIT.

6   DO YOU HAVE A DISTRICT COURT WITHIN THE NINTH

7   CIRCUIT?

8   **MR. CLARK:** YES -- DISTRICT COURT WITHIN THE NINTH

9   CIRCUIT?

10   **THE COURT:** YES.

11   **MR. CLARK:** SOLID HOST WAS IN THE NINTH CIRCUIT.

12   **THE COURT:** WHAT DISTRICT WAS THAT?

13   **MR. CLARK:** CENTRAL DISTRICT OF CALIFORNIA.

14   **THE COURT:** OKAY. YOU KNOW WHAT I WOULD LIKE, I

15   DON'T KNOW IF YOU ALL CAN PROVIDE IT, I WOULD LIKE TO FIND OUT

16   ON THE DISTRICT COURT CASES IN WHICH THE JUDGES RULED AT THE

17   PLEADING STAGE, WHAT ULTIMATELY HAPPENED IN THOSE CASES?

18   ULTIMATELY, WERE THERE SUMMARY JUDGMENT MOTIONS? DID THE

19   DEFENDANTS PREVAIL IN THOSE CASES? WERE THERE TRIALS? WHAT

20   HAPPENED IN THOSE CASES?

21   **MR. SLAFSKY:** I CAN'T ANSWER THAT QUESTION

22   DEFINITIVELY TODAY. I AM HAPPY TO GO BACK AND FIND OUT.

23   BUT I WILL SAY BASED ON THE RESEARCH I HAVE DONE

24   TODAY, I DON'T THINK ANYTHING OF THAT SORT EVER HAPPENED. I

25   THIS IT WOULD HAVE COME TO MY ATTENTION IN THE COURSE OF THE

1   RESEARCH.

2   **THE COURT:** I WOULD LIKE TO KNOW THAT. THERE ARE A

3   HANDFUL OF CASES THAT YOU HAVE DISCUSSED IN YOUR PAPERS ON THIS

4   WHOLE ISSUE OF CONTRIBUTORY CYBERSQUATTING.

5   I HAVE TO TELL YOU, I HAVE NOT HAD AN OPPORTUNITY TO

6   READ THE AMICUS BRIEFS YET, JUST TRYING TO GET THROUGH ALL OF

7   YOUR PAPERS -- HAVE BEEN KIND OF A CHALLENGE.

8   SO, I WOULD LIKE TO BE ABLE TO SPEND JUST A LITTLE

9   MORE TIME ON THIS WHOLE QUESTION. THE CONTRIBUTORY

10 CYBERSQUATTING I THINK IS THE MOST DIFFICULT HURDLE FOR BOTH OF

11 YOU. I THINK BOTH SIDES HAVE RAISED SOME GOOD ARGUMENTS ON

12 BOTH SIDES OF THAT QUESTION, BUT I AM NOT SURE I SHOULD EVEN

13 REACH THE MERITS OF IT. AND THAT'S WHERE I AM.

14   SO, IT WOULD BE HELPFUL TO KNOW WHAT ULTIMATELY

15 HAPPENED ON -- IN EACH OF THOSE CASES THAT YOU ARE RELYING ON

16 OR TRYING TO DISTINGUISH.

17   SO I WOULD LIKE YOU ALL TO DO THAT, TO FIND OUT.

18   **MR. SLAFSKY:** HAPPY TO DO SO.

19   **MR. CLARK:** YES, ABSOLUTELY.

20   **THE COURT:** AND IS THERE ANY REASON YOU COULDN'T

21 SUBMIT SOMETHING JOINTLY? CAN YOU CONFER ON IT, AND YOU BOTH

22 DO THE RESEARCH AND TALK ABOUT IT?

23   **MR. CLARK:** ABSOLUTELY.

24   **MR. SLAFSKY:** I THINK THAT'S FINE. LET'S BE CLEAR

25 ABOUT WHAT THE COURT IS EXPECTING HERE. THIS IS JUST A SUMMARY

1   FILING, YOU CAN EACH DO YOUR OWN.

2   **MR. CLARK:** OKAY.

3   **THE COURT:** AND SUBMIT YOUR ADDITIONAL ARGUMENT.

4   AND I WOULD LIKE THEM SIMULTANEOUSLY FILED.

5   **MR. CLARK:** SURE. YOU SAID A WEEK?

6   **THE COURT:** A WEEK.

7   **MR. SLAFSKY:** THAT'S FINE, YOUR HONOR.

8   **MR. CLARK:** OKAY.

9   **THE COURT:** ALL RIGHT. ANYTHING ELSE?

10   **MR. SLAFSKY:** THANK YOU VERY MUCH.

11   **MR. CLARK:** THANK YOU, YOUR HONOR.

12   **THE COURT:** MATTER IS SUBMITTED, WITH THE EXCEPTION

13 OF THE DOCUMENT I EXPECT FROM YOU NEXT WEEK, IT IS OTHERWISE

14 SUBMITTED.

15   **MR. CLARK:** THANK YOU.

16   **MR. SLAFSKY:** THANK YOU.

17   (PROCEEDINGS CONCLUDED AT 11:30 A.M.)

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C-09-5939 PJH PETROLIAM NASIONAL BERHAD VERSUS GODADDY.COM, PAGES NUMBERED 1 THROUGH 49, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE INTEGRITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON REMOVAL FROM THE COURT FILE.

/S/ DIANE E. SKILLMAN

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

Ex. B

1 | Aaron M. McKown, California Bar No. 208781
Paula L. Zecchini, California Bar No. 238731
BRYAN CAVE LLP
2 | 3161 Michelson Dr., Suite 1500
Irvine, California 92612-4414
3 | Telephone: (949) 223-7000
Facsimile: (949) 223-7100
4 | E-mail: aaron.mckown@bryancave.com;
          paula.zecchini@bryancave.com
5 |
Attorneys for *Amici Curiae*
6 | NETWORK SOLUTIONS, LLC and
REGISTER.COM, INC.
7 |

8

UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

10

11 | PETROLIAM NASIONAL BERHARD ("PETRONAS"),

Case No. C09-5939 PJH (JCS)

12

Plaintiff,

13

v.

14 | GODADDY.COM, INC.,

15

Defendant.

16

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF NETWORKS SOLUTIONS, LLC AND REGISTER.COM, INC. IN SUPPORT OF DEFENDANT GODADDY.COM'S MOTION FOR SUMMARY JUDGMENT

17

18

19

20

21

22

23

24

25

26

27

28

IR01DOCS516271.1

Bryan Cave LLP
3161 Michelson Drive, Suite 1500
Irvine, California 92612-4414

1 | TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 | PLEASE TAKE NOTICE that Networks Solutions, LLC and Register.com,

3 | Inc. hereby move this Court for leave to file a brief as *amici curiae* in the above-

4 | captioned case in support of Defendant GoDaddy.com's motion for summary

5 | judgment. A copy of the proposed brief is appended as an exhibit to this motion.

6 | **I.   STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF AS *AMICI***

7 | **   *CURIAE***

8 | This Court has broad discretion to permit a non-party to participate in an

9 | action as amicus curiae. *See, e.g., Gerritson v. de la Madrid Hurtado*, 819 F.2d

10 | 1511, 1514 n.3 (9th Cir. 1987); *Nat. Res. Def. Council v. Evans*, 243 F. Supp. 2d

11 | 1046, 1047 (N.D. Cal. 2003) (holding that amici "may file briefs and may possibly

12 | participate in oral argument" in district court actions). As this Court has noted,

13 | "[d]istrict courts frequently welcome amicus briefs from non-parties concerning

14 | legal issues that have potential ramifications beyond the parties directly involved or

15 | if the amic[i] ha[ve] 'unique information or perspective that can help the court

16 | beyond the help that the lawyers for the parties are able to provide.'" *Sonoma Falls*

17 | *Dev., LLC v. Nevada Gold & Casinos, Inc.*,272 F. Supp. 2d 919, 925 (N.D. Cal.

18 | 2003) (quoting *Cobell v. Norton*, 246 F Supp 2d 59, 62 (D.D.C. 2003) (citation

19 | omitted)); *see also In re Nat'l Sec. Agency Tele. Records Litig.*, No. 06-1791 VRW,

20 | 2009 WL 1561818, at *9-10 (N.D. Cal. June 3, 2009) (relying on submissions of

21 | amici curiae regarding proper interpretation of statute).

22 | **II.   STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

23 | Network Solutions is a technology company founded in 1979. With more

24 | than 6.6 million domain names under management, Network Solutions is one of the

25 | five largest domain name registrars in the world. Network Solutions is considered a

26 | leading provider of global domain name registration.

27 | Register.com was founded in 1994. On April 21, 1999, ICANN announced

28 |

1 Register.com as one of the first five test-bed registrars for the competitive Shared

2 Registry System. On June 7, 1999, the company began operations as a registrar in

3 the .com, .net, and .org domains. It was the first of the five test-bed registrars to

4 come online. Today, Register.com is one of the ten largest registrars in the world

5 with more than 2.5 million domain names under management.

6   In ruling on GoDaddy.com's motion to dismiss in this matter, the Court

7 indicated a need to develop a record regarding various issues, including what

8 "forwarding" and "routing" are with respect to domain names and how

9 "forwarding" and "routing" "can be considered part of domain name registration

10 services generally." As two of the largest providers of domain name registration

11 services in the world, Network Solutions and Register.com can provide unique

12 information or perspective from the industry perspective that should assist the Court

13 beyond the help that the parties are able to provide. Moreover, the Court's

14 determination regarding whether "forwarding" and "routing" are core registrar

15 functions for purposes of falling within the safe harbor provision of the ACPA will

16 have significant ramifications beyond the parties in this action in that it will effect

17 every domain name registrar who conducts business in the United States.

18   For these reasons, the Court should grant Network Solutions and

19 Register.com leave to file the accompanying *amici curiae* brief and to participate in

20 the proceedings.

21

22 Dated: November 9, 2011

23

BRYAN CAVE LLP
Aaron M. McKown
Paula L. Zecchini

24

25

By: _____

26

     Aaron M. McKown

27

Attorneys for *Amici Curiae*
REGISTER.COM, INC. and
NETWORK SOLUTIONS, LLC

28

Exhibit A

Aaron M. McKown, California Bar No. 208781
Paula L. Zecchini, California Bar No. 238731
BRYAN CAVE LLP
3161 Michelson Dr., Suite 1500
Irvine, California 92612-4414
Telephone: (949) 223-7000
Facsimile: (949) 223-7100
E-mail: aaron.mckown@bryancave.com;
         paula.zecchini@bryancave.com

Attorneys for *Amici Curiae*
NETWORK SOLUTIONS, LLC and
REGISTER.COM, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

PETROLIAM NASIONAL BERHARD ("PETRONAS"), Plaintiff, v. GODADDY.COM, INC., Defendant.	Case No. C09-5939 PJH (JCS) **BRIEF OF NETWORKS SOLUTIONS, LLC AND REGISTER.COM, INC. AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT GODADDY.COM'S MOTION FOR SUMMARY JUDGMENT**

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

IR01DOCS518630.1

I.   Statement of Interest

Network Solutions, LLC ("Network Solutions") is a technology company founded in 1979. With more than 6.6 million domain names under management, Network Solutions is one of the five largest domain name registrars in the world. Network Solutions is considered a leading provider of global domain name registration.

Register.com, Inc. ("Register.com") was founded in 1994. On April 21, 1999, ICANN announced Register.com as one of the first five test-bed registrars for the competitive Shared Registry System. On June 7, 1999, the company began operations as a domain name registrar in the .com, .net, and .org domains. It was the first of the five test-bed registrars to come online. Today, Register.com is one of the ten largest domain name registrars in the world with more than 2.5 million domain names under management.

Network Solutions and Register.com understand that this Court is being asked to determine whether the automated provision of domain name "routing" services—essentially, the automated issuance of an electronic order directing Internet traffic to the ultimate destination (such as a Website) selected by a domain name customer—is a core function of domain name registrars and thus, protected activity under the safe harbor provisions of the Anti-Cybersquatting Piracy Act ("ACPA).

Given their positions as ICANN-accredited domain name registrars, Network Solutions and Register.com have an interest in ensuring that the Court is fully apprised of (1) the routing process as it pertains to domain names, (2) the provision of routing services as a core function of the services provided by domain name registrars, and (3) the potentially devastating commercial effect of a ruling that severs routing orders from the registration and maintenance processes.

///

///

IR01DOCS518630.1

1

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

1   Network Solutions and Register.com are filing this brief pursuant to Local

2   Rule 7-11 and the authority cited in the attached Motion for Leave to File Brief of

3   *Amici Curiae.*

4   **II.   Summary of Argument**

5   The safe harbor provision of the ACPA affords protection for those "core

6   functions" of a domain name registrar related to the registration and maintenance of

7   domain names. The routing of domain names to Internet addresses (also called

8   "Internet Protocol" or "IP" addresses) is an inherent part of the domain name

9   registration and maintenance processes. Indeed, the registration process cannot be

10   completed without a domain name registrar's issuance of an electronic order routing

11   the new domain name to an IP address, nor can such a domain name be functional

12   without a continual routing order. Domain names do not exist in a vacuum on the

13   Internet; to be functional, they must be linked and directed to an IP address, thus

14   facilitating an Internet user's ability to access the content located at the designated IP

15   address (such as, for example, a Website).

16   The ACPA was enacted to "promote[ ] the continued ease and efficiency users

17   of the current registration system enjoy by codifying current case law limiting the

18   secondary liability of domain name registrars and registries for the act of registration

19   of a name." *Panavision Int'l v. Toeppen*, 141 F.3d 1316, 1319 (9th Cir. 1998). A

20   determination that the provision of domain name routing services fall outside a

21   domain name registrar's core functions would severely limit the willingness of

22   registrars to extend such services to the public. Indeed, such a determination may

23   cause an immediate industry-wide overhaul of the custom and practice with regard to

24   core registration services. When faced with potential liability for the issuance of an

25   automated electronic order that simply serves as a road map to direct Internet traffic

26   to an IP address designated by a domain name customer, many registrars may either

27   cease to offer such services or pass the expense of such liability onto the public.

28

IR01DOCS518630.1

2

1   **III.   THE ROUTING OF DOMAIN NAMES IS A CORE REGISTRAR**

2   **FUNCTION AFFORDED PROTECTION UNDER THE ACPA**

3   **A.   <u>Domain Names and the Internet</u>**

4   The technical details of the Internet have been described in numerous court

5   opinions and will not be repeated in detail here. *See e.g., Reno v. ACLU*, 521 U.S.

6   844, 849-53 (1997). At its most basic, the Internet is a vast network of

7   interconnected computer systems that allows computers on the network to

8   communicate with one another. *See* 47 U.S.C. § 230(f) (defining the Internet as "the

9   international computer network of both Federal and non-Federal interoperable packet

10   switched data networks").

11   Each computer that is connected to the Internet has a unique Internet Protocol

12   ("IP") address that functions as an address for that computer on the Internet. *See*

13   *Name.Space, Inc. v. Network Solutions, Inc.*, 202 F.3d 573, 576 n.1 (2d Cir. 2000).

14   An IP address consists of four sets of numbers separated by periods. *See id.* at 576.

15   As explained in *National A-1 Adver. v. Network Solutions, Inc.*, 121 F. Supp. 2d 156

16   (D.N.H. 2000):

17   IP addresses function much like Social Security numbers or telephone

18   numbers: each IP address is unique and corresponds to a specific

19   entity connected to the Internet. Because number strings can be

20   cumbersome and difficult to remember, the Domain Name System

21   ("DNS") was developed to allow users to link a unique (and easier to

22   remember) domain name with a numeric (and more difficult to

23   remember) IP address, thereby making it more convenient for users to

24   access particular addresses on the Internet. So, for example, a user

25   wishing to access the website maintained by International Business

26   Machines need only remember the domain name "IBM.com," rather

27   than the elaborate numerical IP address of the computer on which

28

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

IR01DOCS518630.1   3

1   information relating to IBM's website is maintained (for example, a

2   typical IP address might be something like: 192.168.0.10).

3 *Id.* at 161-162.

4   In order for a computer user to access a specific Internet site, a domain name

5 must be associated with an IP address for that Internet site (such as, for example, a

6 company's corporate Website). Through this association of a domain name with an

7 IP address, Internet traffic is able to be directed—i.e. routed—to a specific IP

8 address. The routing capability is the electronic bridge – or road map – between the

9 user (technically, the user's browser) and the Internet site. Absent an electronic

10 instruction to cross the bridge, a user entering a domain name into his or her browser

11 will never be directed to the associated IP address selected by the domain name

12 customer, and will be unable to access the content contained on the Internet site

13 requested. "This is because domain names serve the sole purpose of making it easier

14 for users to navigate the Internet; the real networking is done through the IP

15 numbers." *PGMedia, Inc. v. Network Solutions, Inc.*, 51 F. Supp. 2d 389, 408

16 (S.D.N.Y. 1999).

17   **B.   Domain Name Registration Services**

18   Domain names are secured by registering a string of alphanumeric characters

19 with a top-level domain name "registry." Registries are entities that maintain official

20 records correlating domain names with IP addresses for all domain name

21 registrations in a certain top-level domain—i.e., .com, .net, .gov, etc. The actual

22 domain name registration process (i.e., the selection of a domain name and the

23 association of it with an IP address) is performed through the use of a domain name

24 registrar, an organization or commercial entity that is accredited by ICANN and

25 approved by the applicable domain name registry to accept applications for domain

26 names from customers in the public. During the domain name registration process,

27

28

IR01DOCS518630.1

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

4

1 the customer selects a domain name character string and an associated IP address to

2 which the domain name is to resolve.

3 Inherent in both the initial domain name registration process and the

4 subsequent maintenance of that domain name registration at the applicable registry,

5 is the automated provision of routing information for the domain name, which serves

6 to direct Internet traffic to a desired end location selected by the domain name

7 customer. This routing information is provided in the form of an electronic order

8 directing Internet traffic to a specific IP address or, in the case of forwarding, to the

9 IP address shared by another domain name. The issuance of this instruction is

10 referred to by domain name registrars as "routing." "Forwarding" is merely one

11 form of domain name routing, differentiated only by the route the electronic

12 information travels to reach the destination selected by the customer. At their most

13 basic, direct routing and routing by forwarding accomplish the same end result—

14 automated resolution of a domain name to an IP address selected by the customer—

15 only by different means.

16 For a domain name to function on the Internet, routing information or

17 instructions must be submitted during the registration process and then continually

18 maintained while the domain name remains registered. Registration cannot be

19 completed without the issuance of some initial routing instruction. Nor can a

20 functional domain name be maintained absent a continuing association of the domain

21 name with an IP address. All domain names must be associated with an IP address

22 in order to be functional on the Internet—whether that address is specifically

23 assigned to the newly registered domain name or is shared with another domain

24 name.

25 **C.   Routing Services Are Afforded Protection Under the ACPA**

26 Domain name registrars are granted immunity under the ACPA for registering

27 and maintaining the registration of domain names:

28

IR01DOCS518630.1

5

1   A domain name registrar, a domain name registry, or other domain

2   name registration authority shall not be liable for damages under this

3   section *for the registration or maintenance of a domain name for*

4   *another* absent a showing of bad faith intent to profit from such

5   registration or maintenance of the domain name.

6   15 U.S.C. § 1114(2)(D)(iii) (emphasis added). The federal courts have interpreted

7   the ACPA's safe harbor provision to include the "core functions" of a registrar. *See*

8   *Solid Host, NL v. Namecheap, Inc.* 652 F. Supp. 2d 1092, 1105 (C.D. Cal. 2009).

9   Network Solutions and Register.com consider the provision of routing

10 information in connection with a domain name to be an essential function of the

11 registration and maintenance processes – without it, a domain name is not functional.

12 In recognition of this fact, Network Solutions and Register.com include both direct

13 routing and routing through forwarding capabilities in the initial domain name

14 registration process, and they permit customers to maintain those services throughout

15 the registration period.

16 **IV.   A Judicial Determination That Routing Services Are Not A Core**

17 **Registrar Service Will Potentially Lead To Devastating Effects**

18   A finding by this Court that the provision of routing services (whether directly

19 or through forwarding) goes beyond a registrar's core functions and thus, is outside

20 the ACPA's safe harbor provision, would have potentially devastating ramifications

21 for both domain name registrars and consumers. Not only would such a

22 determination stifle the registrar industry by causing a wholesale overhaul of the

23 current registration process, but it would also impose a gatekeeping function on

24 registrars (on an otherwise automated process) previously rejected by other courts.

25   A domain name cannot be registered or maintained without being routed to an

26 IP address. As a result, registration and maintenance services necessarily include,

27 and indeed require, the provision of routing services. With Network Solutions and

28

IR01DOCS518630.1   6

1   Register.com, consumers do not incur a separate routing fee when registering a

2   domain name; rather, the cost is included in the overall fee charged for registration.

3   A determination by this Court that imposes potential liability on domain name

4   registrars for the mere act of issuing an electronic order providing directions for

5   Internet traffic to reach a designated IP address would cause an overhaul of the

6   current domain name registration system to somehow allow for the unbundling of

7   routing services from the registration process. This overhaul would have a chilling

8   effect on commerce and undoubtedly result in an industry-wide increase in the fees

9   associated with registration in order to offset potential liability.

10   Even more problematic is the Hobson's choice presented to domain name

11   registrars when faced with the potential liability for providing routing services:

12   Cease providing registration services altogether or implement an expensive,

13   burdensome, and inaccurate gatekeeping process in hopes of reducing, but not

14   eliminating, potential liability. Given the impossibility of making a subjective

15   determination regarding infringement for every domain name presented for

16   registration (which is commonly accomplished through automated means by the

17   customer visiting the registrars Website), as well as the potential liability from

18   statutory damages of up to $100,000 per domain name, registrars are likely to opt out

19   of the registration business altogether. Alternatively, registrars are likely to pass on

20   the significant expense associated with such gatekeeping onto the public.

21   This precise outcome was recognized by the Northern District of Texas shortly

22   after the enactment of the ACPA. In *Lockheed Martin*, the court explained that it

23   was Congress' recognition that a registrar could not possibly examine every domain

24   name for infringement that led to the enactment of the ACPA's safe harbor

25   provision:

26
27   It is quite understandable that Congress did not cause defendant as a
            domain name registrar, or as a keeper of the registry, to be subject to
28

IR01DOCS518630.1   7

1   civil liability under § 1125(d). . . . Sheer volume alone would prohibit

2   defendant performing the role plaintiff would assign.   Defendant

3   simply could not function as a registrar, or as keeper of the registry, if

4   it had to become entangled in, and bear the expense of, disputes

5   regarding the right of a registrant to use a particular domain name.

6   The fact that defendant could theoretically do what plaintiff asks does

7   not mean that defendant is obligated to do so at the risk of financial

8   ruin.

9   *Lockheed Martin Corp. v. Network Solutions, Inc.,* 141 F. Supp. 2d 648, 655 (N.D.

10 Tex. 2001).

11   This is exact the scenario that will occur if the Court holds that routing,

12 whether directly or through forwarding, or the issuance of any other electronic order

13 directing Internet traffic to an IP address associated with a domain name, is not a

14 core registrar function. The practical impact of such a finding would be to impose

15 substantial liability on domain name registrars who have traditionally considered

16 routing a core registrar function. Moreover, in the face of such liability, registrars

17 will be faced with the choice of ceasing routing (and effectively registration) services

18 altogether or passing the substantial expense to implement gatekeeper functions with

19 a continued risk of liability onto the consumer, both of which are contrary to the

20 ACPA's stated purpose "to promote the growth of online commerce." Report 106-

21 140, 106th Cong., 1st Sess. (Aug. 5, 1999) (Legislative History).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

IR01DOCS518630.1

8

1 **IV.   CONCLUSION**

2   Network Solutions, LLC and Register.com, Inc. respectfully request the Court

3 consider its *amici curiae* brief in reaching a determination that the provision of

4 routing services, whether directly or through forwarding, are inherent in the

5 registration and maintenance services provided by domain name registrars and, as

6 such, are protected under the safe harbor provisions of the Anti-Cybersquatting

7 Piracy Act.

8 Dated: November 2, 2011

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

BRYAN CAVE LLP
Aaron M. McKown
Paula L. Zecchini

By: */s/ Aaron M. McKown*
      Aaron M. McKown
Attorneys for *Amici Curiae*
REGISTER.COM, INC. and
NETWORK SOLUTIONS, LLC

IR01DOCS518630.1

9

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

1   Aaron M. McKown, California Bar No. 208781
    Paula L. Zecchini, California Bar No. 238731
2   **BRYAN CAVE LLP**
    3161 Michelson Dr., Suite 1500
3   Irvine, California 92612-4414
    Telephone: (949) 223-7000
    Facsimile: (949) 223-7100
4   E-mail: aaron.mckown@bryancave.com;
            paula.zecchini@bryancave.com
5
    Attorneys for *Amici Curiae*
6   NETWORK SOLUTIONS, LLC and
    REGISTER.COM, INC.
7

8   **UNITED STATES DISTRICT COURT**

9   **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

10

11 PETROLIAM NASIONAL BERHARD   Case No. C09-5939 PJH (JCS)
    ("PETRONAS"),
12
13   Plaintiff,   **[PROPOSED] ORDER
                                         GRANTING MOTION FOR
14   v.   LEAVE TO FILE BRIEF *AMICI
                                         CURIAE* OF NETWORK
15 GODADDY.COM, INC.,   SOLUTIONS, LLC AND
                                         REGISTER.COM, INC.**
16   Defendant.
17

18

19

20

21

22

23

24

25

26

27

28

IR01DOCS518641.1

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

1   The Court, having reviewed Network Solutions, LLC and Register.com, Inc.'s

2   Motion For Leave To File Brief *Amici Curiae* (the "Motion"), filed on November 11,

3   2011, orders that the leave requested in the Motion is hereby GRANTED, and the

4   Brief of *Amici Curiae* Network Solutions, LLC and Register.com, Inc., attached as

5   Exhibit A to the Motion, is deemed filed without further action.

6   **IT IS SO ORDERED.**

7

8   Dated: _____   _____

9   Hon. Phyllis J. Hamilton

10   United States District Judge

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

IR01DOCS518641.1   1

[PROPOSED] ORDER
Civil Case No. C09-5939 PJH (JCS)

Ex. C

GREENBERG TRAURIG, LLP
IAN BALLON (SBN 141819)
LORI CHANG (SBN 228142)
2450 Colorado Avenue, Suite 400E
Santa Monica, California 90404
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
Email: ballon@gtlaw.com; changl@gtlaw.com

Attorneys for Amicus Curiae
ENOM, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD ("PETRONAS")	CASE NO. C09-5939 PJH (JCS)
Plaintiff,	**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ENOM, INC. IN SUPPORT OF DEFENDANT GODADDY.COM, INC.'S MOTION FOR SUMMARY JUDGMENT**
vs.	
GODADDY.COM, INC.	
Defendant(s).	

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ENOM, INC.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2   PLEASE TAKE NOTICE THAT eNom, Inc. ("eNom") hereby moves the Court for permission

3 to appear and file the amicus curiae brief tendered with this motion and attached hereto as Addendum A.

4   Courts have liberally exercised their broad discretion to permit a non-party to participate in an

5 action as *amicus curiae*. *See Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA,

6 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007) (granting motion for lave to file brief by amici curiae;

7 stating "[w]hether to allow Amici to file a brief is solely within the Court's discretion, and generally

8 courts have 'exercised great liberality . . . [t]here are no strict prerequisites that must be established prior

9 to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing

10 that his participation is useful or otherwise desirable to the court.'") (quoting *In re Roxford Foods Litig.*,

11 790 F. Supp. 987, 997 (E.D. Cal. 1991)); *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos,*

12 *Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) ("District courts frequently welcome amicus briefs from

13 non-parties concerning legal issues that have potential ramifications beyond the parties directly involved

14 or if the amicus has 'unique information or perspective that can help the court beyond the help that the

15 lawyers for the parties are able to provide.'") (quoting *Cobell v. Norton*, 246 F Supp 2d 59, 62 (D. D.C.

16 2003); Natural Resources Defense Council v. Evans, 243 F. Supp. 2d 1046, 1047 (N.D. Cal. 2003)

17 ("*Amici . . .*may file briefs and may possibly participate in oral argument").

18   eNom is one of the world's leading domain name registrars accredited by ICANN. eNom

19 provides domain name registration and maintenance services similar to those provided by defendant

20 GoDaddy.com, Inc. ("GoDaddy"), and therefore is interested in the outcome of this case. Accordingly,

21 the Court should permit eNom to appear as *amicus curiae* and file its proposed brief in support of

22 GoDaddy's motion for summary judgment. *See Sonoma Falls Developers*, 272 F. Supp. 2d at 925

23 (granting amicus curiae leave to file a brief where the court found that it had was involved in the events

24 leading to the case and had interests in the contracts at issue).

25

26

27

28

1

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ENOM, INC.

1
                                 Respectfully submitted,

2   DATED: November 2, 2011   GREENBERG TRAURIG, LLP

3

4   By s/IanCBallon/

5   IAN C. BALLON
                                Attorneys for eNom, Inc.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ENOM, INC.

Addendum A

GREENBERG TRAURIG, LLP
IAN BALLON (SBN 141819)
LORI CHANG (SBN 228142)
2450 Colorado Avenue, Suite 400E
Santa Monica, California 90404
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
Email: ballon@gtlaw.com; changl@gtlaw.com

Attorneys for Amicus Curiae
ENOM, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD ("PETRONAS")	CASE NO. C09-5939 PJH (JCS)
Plaintiff,	**BRIEF FOR AMICUS CURIAE ENOM, INC.**
vs.	
GODADDY.COM, INC.	
Defendant(s).	

1   **I.**   **INTRODUCTION AND STATEMENT OF AMICUS CURIAE**

2   eNom, Inc. ("eNom") seeks leave to file an *amicus* brief in this case to address an issue of great

3   importance to all domain name registrars and registries—and ultimately to brand owners as well. eNom

4   is the second largest ICANN accredited domain name registrar that provides domain name registration

5   and related services. The process is fast, simple and relatively inexpensive. A central part of registering

6   a domain name is logically associating the domain name with a location on the Internet so that the

7   domain name resolves to a website, rather than generating an error message. Brand owners commonly

8   register multiple domain names that, through the use of a domain name forwarding service, may resolve

9   to separate locations or to a single location. Domain name forwarding allows brand owners to deter

10   cybersquatting by registering different variations of their marks without having to set up different

11   websites for each name or generating error messages that may discourage users who are trying to locate

12   a website by guessing its address based on the site owner's marks. Domain name forwarding is a

13   standard feature provided by eNom, GoDaddy and most other registrars. Treating domain name

14   forwarding services as different from other registration services, or requiring advance screening, would

15   run counter to the policy objectives of the Anti-Cybersquatting Consumer Protection Act ("ACPA") and

16   controlling Ninth Circuit precedent, and would impose the type of policing functions on registrars that

17   both Congress and courts in this Circuit have concluded would be impractical and unreasonable (and

18   would ultimately slow down and make substantially more expensive the process of registering domain

19   names).

20   Congress, in enacting the ACPA, sought to compel trademark owners to resolve disputes through

21   direct litigation against cybersquatters or dispute resolution procedures (such as ICANN's Uniform

22   Dispute Resolution Procedure ("UDRP")), rather than suits against registrars or registries. The plaintiff

23   in this case in fact successfully obtained the domain name registrations at issue through an *in rem* action

24   under the ACPA. By contrast, the ACPA provides broad immunity to registrars (and registries) for

25   refusing to register, remove or disable a domain name in compliance with a court order or in

26   implementing a reasonable policy prohibiting the registration of infringing marks; and limited liability

27   to only the narrow circumstances in which "bad faith intent to profit from such registration or

28   maintenance of the domain name" is proven. 15 U.S.C. § 1114(2)(D)(i) & (iii). The act of registering

<div align="center">1</div>

---

1   domain names, including allowing those names to resolve to websites (whether new ones or preexisting

2   locations to which a domain name is forwarded), does not and cannot in and of itself support a finding

3   of bad faith under the ACPA or otherwise serve as the basis for finding a domain name registrar liable

4   for any misconduct by third party users. Indeed, the ACPA makes clear that "[a] person shall be liable

5   for using a domain name [with the bad faith intent to profit from another's trademark] . . . only if that

6   person is the domain name *registrant* or that registrant's authorized *licensee*."   15 U.S.C. §§

7   1125(d)(1)(A) & (D) (italics added). By its terms, the ACPA does not authorize the imposition of

8   liability on registrars such as GoDaddy and neither does Lanham Act case law.

9   This Court should decline plaintiff's invitation to expand the scope of liability for cybersquatting

10   beyond what Congress and the Ninth Circuit intended by parsing through the process employed by

11   legitimate domain name registrars for registering domain names to determine if any of these neutral

12   functions should form the basis for liability. To do otherwise would alter the careful balance created by

13   Congress and the courts and substantially disrupt registration services to the public, likely slowing down

14   and increasing the cost of registration for trademark owners such as the plaintiff and other Internet users.

15   **II.   ARGUMENT**

16   **A.   <u>Domain Name Registrars Are Intermediaries That Perform Neutral Functions On</u>**

17   **<u>Behalf Of Registrants</u>**

18   GoDaddy and eNom are among nearly one thousand domain name registrars accredited by

19   ICANN.[1] "ICANN is a private not-for-profit corporation that coordinates the Internet domain name

20   system ('DNS') on behalf of the United States Department of Commerce ('DOC')." *Coalition for*

21   *ICANN Transparency Inc. v. Verisign, Inc.*, 464 F. Supp. 2d 948, 951 (N.D. Cal. 2006).[2] The DNS, in

22   turn, operates through a registration system, and a domain name exists and is created by virtue of its

[1]   A   full   list   of   ICANN-accredited   registrars   is   available   on   its   website   at
http://www.icann.org/en/registrars/accredited-list.html.   As shown on ICANN's website, there are
currently 995 accredited registrars, over half of which are located in the United States.

[2]   "Every computer connected to the Internet has a unique Internet Protocol ('IP') address" which
comprises a "long string[] of numbers, such as 64.233.161.147." *Id.* at 951-2. A domain name is an
"alphanumeric shorthand for [an] IP address." *Id.* at 952. A domain name contains at least two parts, a
top-level domain ("TLD") (i.e., the domain to the right of the first period, e.g., ".com") and a second-
level domain (i.e., the domain to the left of the first period, e.g., "enom" in "enom.com"). *See id.* "Each
domain name is unique and thus can only be registered to one entity." *Id.*

BRIEF FOR AMICUS CURIAE ENOM, INC.

1 registration "with the appropriate registry operator." *See id.* at 952. "A registry operator maintains the

2 definitive database, or registry, that associates the registered domain names with the proper IP numbers

3 for the respective domain name servers," which "direct Internet queries to the related web resources."

4 *Id.* "A registrant can register a domain name only through companies that serve as registrars for second

5 level domain names." *Id.* "Registrars accept registrations for new or expiring domain names, connect

6 to the appropriate registry operator's TLD servers to determine whether the name is available, and

7 register available domain names on behalf of registrants." *Id.* In this regard, registrars are

8 intermediaries of the DNS that process registrations and maintain domain names on behalf of

9 registrants.

10   ICANN accredited registrars require registrants to consent to online arbitration through the

11 UDRP, which has been very successful in helping trademark owners quickly and easily resolve domain

12 name disputes. *See* Ian C. Ballon, *E-Commerce and Internet Law: Treatise with Forms 2d Edition* §

13 7.05 (West 2d ed. 2011). Registration services are neutral and were never intended by Congress to be

14 actionable. For example, in describing the services of Network Solutions ("NSI"), one of the largest

15 domain name registrars, the Ninth Circuit explained that the "applicant submits NSI's 'template'

16 electronically over the Internet," and when the domain name application is approved (after NSI

17 performs a "conflicts check" by comparing the requested domain name to all registered names), "NSI

18 puts the domain-name combination in its database in conjunction with the correct IP Address," and

19 "then routes Internet users who enter a certain domain-name combination to the registrant's computer."

20 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 982 (9th Cir. 1999). All of this is

21 performed with little (if any) human intervention by NSI. *See id.* As analogized by the Ninth Circuit in

22 *Lockheed*, a registrar functions much in the same as the U.S. Postal Service:

23
24
25
26
27

> NSI's role differs little from that of the United States Postal Service:
> when an Internet user enters a domain-name combination, NSI translates
> the domain-name combination to the registrant's IP Address and routes the
> information or command to the corresponding computer. Although NSI's
> routing service is only available to a registrant who has paid NSI's fee,
> NSI does not supply the domain-name combination any more than the
> Postal Service supplies a street address by performing the routine service
> of routing mail.

28

BRIEF FOR AMICUS CURIAE ENOM, INC.

Id. at 984-85. Much in the same way that the U.S. Postal Service offers mail forwarding services on its website for a fee of $1.00 (*see* Postal Service website at https://moversguide.usps.com/icoa/icoa-main-flow.do?execution=e1s4), registrars such as eNom typically provide domain name forwarding as a free service to registrants who choose to point domain name registrations to existing websites, rather than create new ones.[3] However, it is irrelevant whether domain name forwarding is offered free of charge or for an additional fee because it is a neutral tool intended for lawful purposes. Domain name forwarding does not promote infringement any more so than any other aspect of domain name registration service which, by definition, allows users to logically associate domain name registrations with Internet websites, whether new or preexisting.

eNom, GoDaddy and many other registrars operate in the same manner. They provide tools to trademark owners and other users to quickly, automatically and inexpensively register domain names, facilitating the development of e-commerce.[4] Significantly, registrars do not monitor the activities of registrants or their subsequent use of the domain names, including the use of a domain name forwarding service, and play no role in maintaining the websites associated with the domain names. *See Lockheed*, 194 F.3d at 982; *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F. Supp. 949, 962 (C.D. Cal. 1997), *aff'd*, 194 F.3d 980 (9th Cir. 1999) ("NSI neither controls nor monitors the Internet. A domain name, once registered, can be used in connection with thousands of pages of constantly changing information. . . . [And] NSI cannot reasonably be expected to monitor the Internet."). Nor did Congress

---

[3] For trademark owners, this utility provides added value to e-commerce and deters cybersquatting by encouraging owners to register a variety of domain names (and exclude them from registration by potential squatters) and enabling them to point the domains to a primary website, rather than multiple websites, or none at all (which could cause users to become discouraged and not search further for a brand owner's main site.

[4] To set up domain forwarding, the registrant provides information akin to filling out a "Change Of Address" form with the Postal Service (available online at https://moversguide.usps.com/icoa/icoa-main-flow.do?execution=e1s4) to forward mail from an old address to a new address. In both instances, the registrar and Postal Service performs limited "checking" or verification of the request. eNom, for instance, only checks that the request is being made by the authorized registrant, and does not investigate the circumstances of the new IP address. Similarly, when a "Change of Address" request is made online, the U.S. Postal Service verifies the request by matching an address with its database of U.S. addresses (to correct for zip code or other errors) and make sure it matches the user's credit card billing address.

BRIEF FOR AMICUS CURIAE ENOM, INC.

believe that they could or should be required to do so. *See* S. Rep. No. 106-140, 1999 WL 594571, at *4 & *11.

B.   The ACPA Provides Broad Exemption To Domain Name Registrars

There is a clear statutory immunity provided to domain name registrars and registries that applies broadly to claims arising under the Anti-Cybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d), as confirmed by congressional intent and Ninth Circuit precedent. When Congress enacted the ACPA in 1999, it created a cause of action based on the bad faith use of, registration or trafficking in domain names with intent to profit from the trademarks of another, to combat cybersquatting, but at the same time made explicit that such a claim could not be brought against registrars or registries by unequivocally providing that only a "domain name *registrant* or that registrant's authorized *licensee*" may be held liable for use of a domain name with the requisite bad faith. 15 U.S.C. §§ 1125(d)(1)(A) & (D) (italics added). The Act further created an exemption for domain name registrars and registries by providing that:

> A domain name registrar, a domain registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

15 U.S.C. § 1114(2)(D)(iii). In addition, under the Act, registrars and registries may not be held liable for monetary awards for "refusing to register, remove from registration, transferring, temporarily disabling, or permanently cancelling a domain name" in compliance with a court order or in implementing "a reasonable policy . . . prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another's mark." 15 U.S.C. §1114(2)(D)(i). In short, the ACPA's purpose was twofold—to protect trademark owners against cybersquatters and also ***shield domain name registrars and registries from "overreaching trademark owners"*** seeking to impose liability based on the bad faith conduct of registrants. *See* S. Rep. No. 106-140, 1999 WL 594571, at *4 ("The purpose of the bill is to protect consumers and American businesses, to promote the growth of online commerce, and to provide clarity in the law for trademark owners by prohibiting the bad-faith and abusive registration of distinctive marks as Internet domain names with the intent to profit from the goodwill

BRIEF FOR AMICUS CURIAE ENOM, INC.

1   associated with such marks–a practice commonly referred to as 'cybersquatting.'") & *11 ("The

2   amended bill goes further, however, in order to protect the rights of domain name registrants against

3   overreaching trademark owners.").

4   In creating a statutory immunity under the ACPA for registrars and registries, Congress codified

5   an exemption to liability existing under case law at that time. *See* S. Rep. No. 106-140, 1999 WL

6   594571, at *11 ("The bill, as amended, also promotes the continued ease and efficiency users of the

7   current registration system enjoy by codifying current case law limiting the secondary liability of

8   domain name registrars and registries for the act of registration of a domain name.") (citing *Lockheed*

9   *Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980 (9th Cir. 1999), *aff'd by* 194 F.3d 980 (9th Cir.

10 1999), and *Academy of Motion Picture Arts & Science v. Network Solutions, Inc.*, 989 F. Supp. 1276

11 (C.D. Cal. 1997), which held that Network Solutions, Inc. ("NSI"), a domain name registrar, could not

12 be held liable for trademark infringement). As discussed below, the relevant case law concludes that

13 registrars are not involved in the potentially infringing uses of a domain name, and lack the ability to

14 monitor and police infringing activities by its users.[5]

15   **C.   Courts And Congress Have Made Clear That Registrars Have No Duty To Police**

16   **The Domain Name System For Infringing Activities**

17   Under *Lockheed* and its progeny, domain name registrars are exempt from liability for trademark

18 infringement and contributory liability because a registrar is not involved in "the use of domain names

19 in connection with goods and services on the Internet," i.e., "uses that are capable of infringement." *See*

20 *Lockheed*, 985 F. Supp. at 959-62.[6] A registrar's "acceptance of domain name registrations is not a

21 'commercial use' within the meaning of the Federal Trademark Dilution Act," and its other "use" is not

22 "trademark use" but rather "the pure machine-linking function is the only use at issue." *Id.* at 958-59;

23 *see also id.* at 956 ("When a domain name is used only to indicate an address on the Internet, the domain

24

[5] Plaintiff's reliance on the services defined in the ICANN Registrar Accreditation Agreement is of no

25 moment as there is nothing in the statute or legislative history to suggest that the ICANN agreement is at
    all relevant or that it was even considered by Congress, which largely acted on the statute before the first

26 version of this agreement was even adopted by ICANN on November 4, 1999 (*See*
    http://www.icann.org/en/nsi/icann-raa-04nov99.htm), the same month the ACPA was signed into law by

27 President Clinton.

[6] Congress' codification of a broad statutory immunity for registrars and registries under the ACPA was

28 premised on the lower court's rationale in *Lockheed*. *See* S. Rep. No. 106-140, 1999 WL 594571, at *11.

6

1   name is not functioning as a trademark.") and 960 ("NSI's use of domain names is connected to the

2   names' technical function on the Internet to designate computer addresses, not to the names' trademark

3   function to distinguish goods and services. The fact that NSI makes a profit from the technical function

4   of domain names does not convert NSI's activity to trademark use.").

5   *Lockheed* further held that a domain name registrar "has no affirmative duty to police the

6   Internet in search of potentially infringing uses of domain names," and concluded that registrars were in

7   no position to evaluate whether a registrant's use of a domain name is infringing and had no legal duty

8   to do so. *Id.* at 963 & 966. Not only does a registrar lack sufficient knowledge of a registrant's use of a

9   domain name, but the determination of whether a use is infringing is complicated by the "existence of

10 numerous legitimate, non-infringing uses" of a domain name. *See id.* at 964 & 966 ("NSI is not

11 involved with uses of domain names in connection with Internet resources such as Web sites and e-mail.

12 Therefore, the Court cannot impute knowledge of potential infringement merely from the fact that such

13 uses occurred."). The same mark legitimately may be used by companies in different industries (such as

14 Delta Airlines and Delta Faucets) and internationally where the same mark may be owned by different

15 companies in different countries. Accordingly, "the degree of uncertainty over infringing uses of

16 domain names makes it inappropriate to impose contributory liability" on registrars. *Id.* at 964.

17   As the court concluded in *Lockheed*, registrars are ill-suited to be the arbiter of domain name

18 trademark disputes, and courts and Congress have declined to impose those obligations on registrars.[7]

19 *Id.* at 966; S. Rep. No. 106-140, 1999 WL 594571, at *11; *see also id.* at *7 ("Abusive conduct, like

20 cybersquatting, threatens the continued growth and vitality of the Internet as a platform for all these

21 uses. But in seeking to curb such abuses, Congress must not cast its net too broadly or impede the

22 growth of technology, and it must be careful to balance the legitimate interests of Internet users with the

23 other interests sought to be protected.").[8]

---

24   [7] For this reason, eNom expresses no view on whether the registrant in this case intended to infringe on

25 plaintiff's rights in registering and using the "peteronastower.net" and "petronastowers.net" domain
    names and directing them to pornographic sites. eNom merely points out that the neutral act of allowing

26 a domain forwarding service could not form the basis for imposing liability on a registrar.

      [8] Other jurisdictions have since relied on *Lockheed* and the immunity under the ACPA to deny similar

27 claims asserted against registrars. *See, e.g., Bird v. Parsons*, 289 F.3d 865, 878-79 (6th Cir. 2002)

28 (holding that a domain name auction site cannot be held liable for infringement because "[t]he
    possibility that its customers might buy or sell infringing domain names does not alter the fact that

7

D.   Holding GoDaddy Liable In This Case Would Be Contrary To Existing Law And Would Negatively Impact The Court System And DNS Industry

To hold GoDaddy liable for maintaining the third-party registration of "peteronastower.net" and "petronastowers.net," and for implementing a domain forwarding function set up by the registrant, would run contrary to existing case law and create an unsupported narrowing of the blanket exemption applied to registrars under the ACPA. *See Lockheed*, 985 F. Supp. at 959-62; 15 U.S.C. § 1114(2)(D)(i) & (iii). Congress and courts have cautioned against "overreaching trademark owners" and "improperly broadening" their existing rights. *See Lockheed*, 986 F. Supp. at 967 ("Trademark law does not give Lockheed the right to interfere with all uses of the term 'skunk works' by current domain name holders. . . . "[A]n extension of contributory liability here would improperly broaden Lockheed's property rights in its service mark."); S. Rep. No. 106-140, 1999 WL 594571, at *11.

There are real limitations to what a registrar can do, and those practicalities underlie the exemption carved out under *Lockheed* and the ACPA. *See Lockheed*, 985 F. Supp. at 962 ("NSI neither controls nor monitors the Internet. A domain name, once registered, can be used in connection with thousands of pages of constantly changing information. . . . [And] NSI cannot reasonably be expected to monitor the Internet."). These were plainly illustrated in *Lockheed II*::

> It is quite understandable that Congress did not cause defendant as a domain name registrar, or as keeper of the registry, to be subject to civil liability under § 1125(d). Although plaintiff now tries to backtrack somewhat from the position that defendant as registrar should perform gatekeeper functions for mark owners, even the modified gatekeeper role it now proposes is untenable. **Sheer volume alone would prohibit defendant performing the role plaintiff would assign. Defendant**

[defendant] does not use those names"; "[m]oreover, even a domain name that could be used to violate a registered trademark does not necessarily do so"); *Am. Girl, LLC v. Nameview, Inc.*, 381 F. Supp. 2d 876, 881-82 (E.D. Wis. 2005) ("[R]egistrars are not obliged to examine domain names to ensure that the registrant is not violating the rights of a third-party"); *see also Lockheed Martin Corp. v. Network Solutions, Inc. (Lockheed II)*, 141 F. Supp. 2d 648, 655 (N.D. Tex. 2001) (stating that "that Congress did not cause defendant as a domain name registrar, or as keeper of the registry, to be subject to civil liability under [the ACPA]"); *Size, Inc. v. Network Solutions, Inc.*, 255 F. Supp. 2d 568, 573 (E.D. Va. 2003) ("This Court agrees with the *Lockheed II* analysis, and finds that NSI's domain name registration service is just that-a service. The registrant selects the domain name and provides any content associated with that domain name; all that NSI does is 'translate' the domain name into the registrant's IP address and route users to that address. In this regard, NSI's function is more equivalent to the passive messenger service provided by the United States Postal Service . . .").

8

BRIEF FOR AMICUS CURIAE ENOM, INC.

simply could not function as a registrar, or as keeper of the registry, if it had to become entangled in, and bear the expense of, disputes regarding the right of a registrant to use a particular domain name. The fact that defendant could theoretically do what plaintiff asks does not mean that defendant is obligated to do so at the risk of financial ruin. The reason the UDRP was developed was to provide the mechanism to resolve these disputes. Not only would imposing plaintiff's scheme render the UDRP nugatory, it would cause the domain name registration system in its entirety not to be feasible.

Lockheed II, 141 F. Supp. 2d at 655 (emphasis added). If registrars were required to pre-screen registrations for potential infringement and monitor all subsequent activities, business would contract and be delayed by backlogs caused by the new burdens (registrations would no longer be straightforward to process), and operational costs would no doubt escalate and flow to users. *See also* Ian C. Ballon, *E-Commerce and Internet Law: Treatise with Forms 2d Edition* §§ 7.01-7.03 (West 2d ed. 2011) (providing a history of early domain name disputes, the business problems NSI faced when it was the sole registrar handling these disputes, and the subsequent expansion of the DNS and reduction in costs). In enacting the ACPA, Congress provided broad immunities to registrars so that they would not be required to take extra-judicial actions in resolving domain name disputes. *See* S. Rep. No. 106-140, 1999 WL 594571, at *4 & *7 (stating that the ACPA's purpose was also to "promote the growth of online commerce," "provide clarity in the law for trademark owners" while "balanc[ing] the legitimate interests of Internet users with the other interests sought to be protected").

Plaintiff here seeks to impose upon GoDaddy and all registrars alike a policing duty that is not required under law, and impossible to realize. The unfairness of plaintiff's position is also underscored by its refusal to engage in effective and expedient dispute resolution under the UDRP (as advised by GoDaddy), choosing instead to file seriatim lawsuits in federal court. *See* FAC ¶¶ 49-55; *see also Nameview, Inc.*, 381 F. Supp. 2d at 883 ("The UDRP is an administrative alternative dispute resolution policy which creates a procedure specifically designed to provide a fast and cheap means for resolving domain name disputes. . . . [and] most likely will provide plaintiff with effective relief faster than any procedure available to this court."). Should liability be held against GoDaddy, courts can expect their dockets will be flooded with domain name disputes. *See E-Commerce and Internet Law 2d Edition* § 7.01 at 7-18 ("Disputes over Internet domain names account for by far the largest single category of Internet-related civil disputes resolved in litigation or arbitration."). Courts and businesses should not

BRIEF FOR AMICUS CURIAE ENOM, INC.

1 be burdened by the excessive obligations plaintiff seeks to impose where the law neither requires nor

2 supports a narrowing of the broad immunities granted to registrars under the ACPA and *Lockheed*.

3 **III.   CONCLUSION**

4   For the foregoing reasons, eNom respectfully asks that the Court reject plaintiff's argument for

5 new case law imposing impractical (and ineffective) monitoring obligations on the part of domain name

6 registrars that would be inconsistent with Congressional intent, Ninth Circuit precedent and sound

7 policy.

8

9 DATED: November 2, 2011   GREENBERG TRAURIG, LLP

10

11   By s/IanCBallon/
                                                        IAN C. BALLON
12   Attorneys for eNom, Inc.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

BRIEF FOR AMICUS CURIAE ENOM, INC.

Ex. D

1

2

3

4

5

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

6 PETROLIAM NASIONAL BERHAD,

7   Plaintiff,   No. C 09-5939 PJH

8   v.   **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

9 GODADDY.COM, INC.,   **IN PART AND DENYING IT IN PART; ORDER DENYING PLAINTIFF'S MOTION**

10   Defendant.   **FOR PARTIAL SUMMARY JUDGMENT**
   _____/

11

12   Defendant's motion for summary judgment and plaintiff's motion for partial summary

13 judgment came on for hearing before this court on December 7, 2011. Plaintiff appeared

14 by its counsel Perry R. Clark, and defendant appeared by its counsel John L. Slafsky.

15 Having read the parties' papers, including the supplemental briefs and the briefs of amici

16 curiae, and having carefully considered the arguments of counsel and the relevant legal

17 authority, the court hereby GRANTS defendant's motion in part and DENIES it in part, and

18 DENIES plaintiff's motion.

19   **INTRODUCTION**

20   This is a case brought under the Lanham Act, alleging cybersquatting and

21 contributory cybersquatting, and also alleging state law claims of unfair competition.

22 Plaintiff Petroliam Nasional Behad ("Petronas") is the national oil company of Malaysia, and

23 is wholly-owned by the Government of Malaysia. Defendant GoDaddy.com, Inc.

24 ("GoDaddy.com" or "Go Daddy") is a domain name registrar, with over 50 million domain

25 names registered by customers around the world.

26   Petronas asserts that two domain names – www.petronastower.net

27   and www.petronastowers.net (the "Disputed Domains") – which were registered by Go

28 Daddy, were used by one or more non-parties to violate its trademark rights by

1   cybersquatting. Petronas seeks to hold Go Daddy liable for cybersquatting and for

2   contributory cybersquatting, on the basis that the non-party registrant used Go Daddy's

3   automated systems to point the domain names to a pornographic website that was hosted

4   elsewhere. Go Daddy seeks to have the Petronas Mark declared invalid.

THE DOMAIN NAME SYSTEM

6   The Internet is a network of interconnected computers and computer networks.

7   See, e.g., Reno v. ACLU, 521 U.S. 844, 849-53 (1997); Konop v. Hawaiian Airlines, Inc.,

8   302 F.3d 868, 874-75 (9th Cir. 2002). Every computer connected to the Internet has a

9   numerical address known as an "Internet Protocol Address" or "IP Address," required for

10 one computer to communicate with another. Few people access websites by typing the IP

11 Address. Instead, an Internet user types an alpha-numeric "domain name" that represents

12 the IP Address into his/her web browser.

13   In response to the entry of a domain name, the user's computer communicates back

14 and forth with the Domain Name System ("DNS"), a set of servers that allow the user to

15 locate the IP Address for the computer that hosts the desired website. The DNS does not

16 provide any website content, but instead functions as the Internet's equivalent of "directory

17 assistance." The fundamental building block of the DNS is the "nameserver," which is a

18 database of IP Addresses.

19   The orderly process for acquiring domain names enables the DNS to function

20 properly. The rights to domain names are sold to the public in a process known as "domain

21 name registration." Domain name "registries," the entities responsible for maintaining the

22 authoritative, master list of all domain names, do not deal directly with the general public.

23 Rather, a person who registers a domain name does so through a domain name "registrar"

24 such as Go Daddy.

25   The registrar is the designated intermediary between the domain name registrant

26 and the domain name registry. Go Daddy and all other registrars are accredited by the

27 Internet Corporation for Assigned Names and Numbers ("ICANN"), the international non-

28 profit corporation that has been designated by the United States government to manage

United States District Court
For the Northern District of California

2

1   and coordinate domain names and IP Addresses.

2   A registrant chooses a registrar to provide the registration services. That registrar

3   becomes the designated registrar for the selected domain name. Only the designated

4   registrar may modify or delete information about domain names in a central registry

5   database. After registering the domain name, the registrant uses an online dashboard

6   provided by the registrar to designate the nameserver information concerning where the

7   website is hosted. The registrar's participation in this process is entirely automated.

8   **DOMAIN NAME RESOLUTION AND ROUTING**

9   "Domain name resolution" is the process whereby the DNS converts a domain name

10   into an IP Address that points to a computer hosting a website. Resolution is a multi-step

11   process involving a series of lookups ("resolutions") on various servers. In order for the

12   user's browser to determine which computer on the Internet to access, the browser

13   performs a domain name lookup and translates that domain name into a unique IP

14   Address.

15   This resolution request is initially sent to the DNS resolver that is part of the user's

16   local operating system. Following a series of queries to the local nameserver of the user's

17   Internet Service Provider ("ISP"), and to the DNS databases, the authoritative domain

18   nameserver eventually returns the IP Address of the computer hosting the sought Internet

19   content. The ISP local nameserver then returns this information to the user's DNS

20   resolver, which makes it possible for the user's computer to access the Internet content.

21   This resolution process, by which the user obtains the IP address of the computer

22   hosting the desired Internet content from the authoritative domain nameserver, is

23   commonly referred to as "routing." Registrars like Go Daddy play a critical role in the

24   process by giving the registrant an efficient means to configure the nameserver to point the

25   user to the desired Internet content. If registrars stopped performing the function of taking

26   name server information and providing it to registries, the Internet would not function.

27   Using the registrar's "dashboard," the registrant can choose from several options to

28   point his domain name to content. The registrant can do nothing, in which case the

3

1 nameserver might route to a "coming soon" page or to a page with other default

2 information. In the alternative, the registrant can configure the nameserver so that it routes

3 either to a "record not found" error message, or to a newly created website on a server

4 hosted by the registrar or some third party, or to an existing website already associated

5 with another domain name.

6   This last form of routing is referred to as "domain name forwarding." When a

7 registrant elects to route his domain name in this fashion, an Internet user typing the

8 forwarded domain name into his web browser will be automatically directed to the

9 pre-existing website. From the Internet user's perspective, there is no difference between

10 forwarding and other forms of routing.

11   **FACTUAL BACKGROUND**

12   Petronas is based in Kuala Lumpur, Malaysia. Its official website is

13 www.petronas.com.my, and it owns several additional U.S.-based websites that incorporate

14 the name "Petronas." Petronas uses the www.petronastwintowers.com.my domain name

15 for the official website of the Petronas Twin Towers (the headquarters of Petronas).

16   In May 2003, a third party registered two domain names, www.petronastower.net

17 and www.petronastowers.net (the "Disputed Domains"), with the domain registrar

18 eNom.com ("eNom"), and also pointed – or "forwarded" – the Disputed Domains to a pre-

19 existing website featuring pornography. For most of the time between May 29, 2003 and

20 November 11, 2006, at least one of the Disputed Domains was directed to a website

21 displaying pornography. On April 1, 2007, the then-registrant – Heiko Schoenekess –

22 changed registrars from eNom to Go Daddy. Schoenekess used Go Daddy's online

23 "dashboard" to automatically forward the Internet traffic for the Disputed Domains to the

24 same pornographic website with which they had previously been associated.

25   It was not until November 26, 2009 that Petronas learned that the domain name

26 petronastower.net had been registered with GoDaddy.com, by a third party. Petronas

27 asserts that it immediately advised Go Daddy of the unauthorized use of the

28 "petronastower" name, and requested that Go Daddy cease its "direct and contributory

4

1   infringement" of Petronas' mark.

2   Go Daddy responded on November 30, 2009, stating that it would not tolerate illegal

3   content on its customers' websites, and would cooperate with law enforcement to get any

4   such websites taken down. Go Daddy further informed Petronas that

5   any disputes over the ownership or wording of the domain name itself will
         need to be sent to either the registrant, through an arbitration forum such as
6   World Intellectual Property Organization . . . or the local court system. Per
         ICANN regulations, domain registrars are prohibited from becoming involved
7   in domain ownership disputes.

8   Nevertheless, instead of utilizing an arbitration procedure, which it had successfully used

9   previously, Petronas submitted a trademark claim to Go Daddy on December 16, 2009.

10   Petronas attached a copy of Go Daddy's "Trademark and/or Copyright Infringement Policy"

11   to the claim. That policy states, with regard to "Domain Name Dispute Claims:"

12
         Please refer to the Uniform Domain Name Dispute Resolution Policy ("the
13   UDRP") if you have a concern or dispute concerning a domain name. The
         UDRP covers domain name disputes; this policy specifically excludes domain
14   name disputes.

15   Go Daddy responded the same day, informing Petronas that although the domain

16   name petronastower.net was registered through Go Daddy, "the domain is forwarding to a

17   website that is hosted elsewhere," and that "[a]ny issues regarding the content of the

18   website will need to be addressed to the owner of the site, either directly, or to the hosting

19   provider."

20   Further, consistent with its stated policy, Go Daddy reiterated:

21   We can only process claims of trademark infringement against the content of
         websites that we host. ICANN, the managing body of the internet, domain
22   name registrars, specifically prohibits domain registrars from becoming
         involved in disputes over domain ownership in their Uniform Domain Name
23   Dispute Resolution Policy. Any disputes over the ownership or wording of the
         domain name itself will need to be sent either to the owner, or through an
24   arbitration forum, or the local court system.

25   As an ICANN-accredited registrar, Go Daddy is required to implement and follow the

26   UDRP for disputes concerning domain names. That policy requires registrars, other than in

27   exceptional circumstances, to maintain the status quo during a domain name dispute until

28   receipt of directions from the registrant, an order from a court or arbitral tribunal, or the

5

1   decision of an administrative panel. Additionally, as Go Daddy informed Petronas, the

2   UDRP specifically prohibits registrars from becoming involved in disputes over domain

3   name ownership.

4   During the following two weeks, Petronas continued urging Go Daddy to disable the

5   domain name and website. In addition, on December 16, 2009, Petronas attempted to

6   contact the registrant of the allegedly infringing petronastower.net domain name by using

7   contact information provided by Go Daddy. Petronas requested that the registrant

8   immediately cease its use of the petronastower domain name. According to Petronas, it

9   did not receive a response to its e-mail, and calls to the telephone number went to an

10 answering machine with a recorded message asking for a "10-digit YAK message followed

11 by the hash sign."

12   On December 18, 2009, Petronas filed the present action. Petronas subsequently

13 filed an in rem action against Petronastower.net (No. C-10-0431), and on May 13, 2010,

14 the court granted Petronas' motion to transfer ownership of the domain name. Final

15 judgment was entered in that case on June 14, 2010.

16   In July 2010, Petronas discovered that the domain name petronastowers.net had

17 also been registered with Go Daddy by a third party, and was set to forward to a website

18 that was located elsewhere. Just as before, counsel for Petronas submitted a trademark

19 claim to Go Daddy, and included a copy of Go Daddy's policy stating that domain name

20 disputes were governed by the UDRP. Again, Go Daddy immediately responded that

21 issues regarding the content of the transferee website had to be addressed with the owner

22 of the website or the hosting provider. Go Daddy reiterated that it was prohibited by ICANN

23 and the UDRP from getting involved in such disputes.

24   On July 12, 2010, Petronas filed a second in rem action (C-10-3052) against

25 Petronastowers.net, and a motion to transfer ownership of that domain name. The motion

26 was granted on August 27, 2010. Final judgment was entered in that case on September

27 9, 2010.

28   Meanwhile, Go Daddy had moved for judgment on the pleadings in the present

6

1 action, and the motion was granted as to all causes of action, in an order issued September

2 9, 2010. On September 29, 2010, Petronas filed a first amended complaint (FAC),

3 asserting three causes of action – (1) cybersquatting, in violation of 16 U.S.C.

4 § 1125(d) (the Anticybersquatting Consumer Protection Act or "ACPA"); (2) contributory

5 liability for cybersquatting; and (3) unfair competition, under California Business &

6 Professions Code § 17200 and California common law.

7   Go Daddy filed a motion to dismiss the FAC for failure to state a claim. The court

8 issued an order on May 5, 2011 denying the motion, stating that it was unable to resolve a

9 number of issues raised in the motion in the absence of a developed record.

10   Among other things, the court requires a record clarifying the mechanics of
           what GoDaddy did or does with regard to the disputed domain names, and
11   what "forwarding" and "routing" are and whether either or both can be
           considered part of domain name registration services generally or the
12   services offered by GoDaddy. In addition, while the court has certain
           reservations concerning the adequacy of the pleading, it has concluded that
13   dismissing the first amended complaint with leave to amend, and then toiling
           through yet another round of briefing on motions to dismiss, would not be
14   productive.

15 May 5, 2011 Order at 1-2.

16   Go Daddy now seeks summary judgment as to all causes of action asserted in the

17 FAC, and as to its counterclaim for cancellation of registration. Petronas seeks partial

18 summary judgment, as to the claim for contributory cybersquatting.

19   **DISCUSSION**

20 A.   Legal Standard

21   A party may move for summary judgment on a "claim or defense" or "part of . . . a

22 claim or defense." Fed. R. Civ. P. 56(a). Summary judgment is appropriate when there is

23 no genuine dispute as to any material fact and the moving party is entitled to judgment as a

24 matter of law. Id.

25   A party seeking summary judgment bears the initial burden of informing the court of

26 the basis for its motion, and of identifying those portions of the pleadings and discovery

27 responses that demonstrate the absence of a genuine issue of material fact. Celotex Corp.

28 v. Catrett, 477 U.S. 317, 323 (1986). Material facts are those that might affect the outcome

1 of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a

2 material fact is "genuine" if there is sufficient evidence for a reasonable jury to return a

3 verdict for the nonmoving party. Id.

4   Where the moving party will have the burden of proof at trial, it must affirmatively

5 demonstrate that no reasonable trier of fact could find other than for the moving party.

6 Soremekun v.Thrifty Payless, Inc., 509 F.3d 978, 994 (9th Cir. 2007). On an issue where

7 the nonmoving party will bear the burden of proof at trial, the moving party can prevail

8 merely by pointing out to the district court that there is an absence of evidence to support

9 the nonmoving party's case. Celotex, 477 U.S. at 324-25. If the moving party meets its

10 initial burden, the opposing party must then set out specific facts showing a genuine issue

11 for trial in order to defeat the motion. Anderson, 477 U.S. at 250; see also Fed. R. Civ. P.

12 56(c), (e).

13   When deciding a summary judgment motion, a court must view the evidence in the

14 light most favorable to the nonmoving party and draw all justifiable inferences in its favor.

15 Anderson, 477 U.S. at 255; Hunt v. City of Los Angeles, 638 F.3d 703, 709 (9th Cir. 2011).

16 B.   The Parties' Motions

17   1.   Direct cybersquatting claim

18   Go Daddy seeks summary judgment on the claim of direct cybersquatting.

19 "Cybersquatting" is the bad faith registration of a domain name that is identical or

20 confusingly similar to another's distinctive mark. 15 U.S.C. § 1125(d)(1)(A). The ACPA

21 establishes civil liability for "cyberpiracy" where a plaintiff proves that (1) the defendant

22 registered, trafficked in, or used a domain name; (2) the domain name is identical or

23 confusingly similar to a protected mark owned by the plaintiff; and (3) the defendant acted

24 "with bad faith intent to profit from that mark." 15 U.S.C. §1125(d)(1)(A); see also DSPT

25 Int'l, Inc. v. Nahum, 624 F.3d 1213, 1218-19 (9th Cir. 2010); Bosley Medical Inst., Inc. v.

26 Kremer, 403 F.3d 672, 680 (9th Cir. 2005).

27   Go Daddy argues that there is insufficient evidence for a reasonable juror to find for

28 Petronas on element (1) or element (3). Go Daddy also asserts that the cybersquatting

8

1   claim fails as a matter of law because the ACPA provides domain name registrars with a

2   clear "safe harbor" from liability for registration or maintenance of a domain name for

3   another, absent a bad faith intent to profit from such registration or maintenance of the

4   domain name. <u>See</u> 15 U.S.C. § 1114(2)(D). Because the court finds that Petronas has not

5   provided evidence sufficient to raise a triable issue with regard to the elements of the claim,

6   the court does not address Go Daddy's alternative argument regarding the applicability of

7   the ACPA "safe harbor" provision.

8   With regard to element (1), Petronas alleges in the FAC that Go Daddy is liable

9   under the ACPA for "using" the Disputed Domains to route Internet users via GoDaddy

10   nameservers to a third-party website. Go Daddy asserts, however, that there is no

11   evidence that it has "used" the Disputed Domains as the registrant or as the registrant's

12   authorized licensee, and that only the domain name registrant or the registrant's authorized

13   licensee can "use" a domain name for purposes of the ACPA.

14   Go Daddy notes that it is undisputed that it was Heiko Schoenekess, not Go Daddy,

15   that was the registrant of the Disputed Domains. Thus, Go Daddy asserts, it can be liable

16   only if it was the "authorized licensee" of the registrant. Go Daddy contends, however, that

17   there is not a shred of evidence supporting a finding that Go Daddy acted as Schoenekess'

18   authorized licensee – no evidence of any communication between Go Daddy and

19   Schoekeness to that effect, and no evidence of any contractual arrangement to that effect.

20   Moreover, Go Daddy argues, its conduct is not the type of "use" that is covered by

21   the ACPA, as Go Daddy neither created the website to which the Disputed Domains

22   pertain, nor placed any content on such website, nor ever had any association with such

23   website. Go Daddy contends that the ACPA is directed toward the illegitimate uses of a

24   domain name in which the user is attempting to profit from the value of a trademark (citing

25   <u>Ford Motor Co. v. Greatdomains.com, Inc.</u>, 177 F.Supp. 2d 635, 642 (E.D. Mich. 2001)).

26   Go Daddy contends that as a registrar, its role was limited to providing the infrastructure for

27   the registrant to route the Disputed Domains automatically to a website of his own

28   choosing, which is not the type of illegitimate use contemplated by the statute.

1   In opposition, Petronas asserts that element (1) is satisfied because Go Daddy

2 "used" the Disputed Domains when it acted as the registrant's authorized licensee.

3 Petronas points to Go Daddy's form agreement with the registrant (Go Daddy's "Universal

4 Terms of Service"), pursuant to which the registrant granted Go Daddy the "right to

5 terminate [the registrant's] access to Services at any time, without notice, for any reason

6 whatsoever." Under the agreement, "Services" included "using our systems to forward a

7 domain, URL, or otherwise to a system or site hosted elsewhere."

8   Petronas also cites to the deposition testimony of one of Go Daddy's designated

9 witnesses, claiming that the witness testified that she was unaware of anything in any of the

10 agreements between Go Daddy and the registrant of the domain names petronastower.net

11 and petronastowers.net that would have prevented Go Daddy from stopping its domain

12 name forwarding service for those domain names."[1] Based on this, Petronas asserts that

13 Go Daddy's agreements with the registrant granted it a license to freely use the Disputed

14 Domains in connection with the domain name forwarding service and to continue or

15 discontinue the service based on Go Daddy's own independent decision.

16   With regard to element (3), Go Daddy asserts that there is no evidence that it acted

17 with a "bad faith intent to profit" from Petronas' trademark. A finding of "bad faith" is an

18 essential prerequisite to finding an ACPA violation, though it is not required for general

19 trademark liability. Lahoti v. VeriCheck, Inc., 586 F.3d 1190, 1202 (9th Cir. 2009). In

20 determining whether a person has a "bad faith intent" as described above, the court "may

21 consider" any or all of the nine factors listed in 15 U.S.C. § 1125(d)(1)(B)(i). In addition,

22 however, "bad faith intent" will not be found in any case in which the court determines that

23 the person believed and had reasonable grounds to believe that the use of the domain

24 name was a fair use or otherwise lawful. 15 U.S.C. § 1125(d)(1)(B)(ii).

25   Go Daddy asserts that there can be no evidence of any bad faith intent on its part

26

27   [1] The court notes that the transcript of the deposition of the Go Daddy witness in
    question reflects that in response to the question whether anything in the agreements would
28 have prevented Go Daddy from stopping the forwarding service, the witness responded, "I
    don't know" – not that she was "unaware of anything" like that in the agreements.

10

1   because the forwarding of the Disputed Domains to a third-party website was an automated

2   function, with no volitional input by Go Daddy. Go Daddy contends that the evidence

3   shows that the registrant of the Disputed Domains utilized the system to cause the Internet

4   users who typed the Disputed Domains into their browsers to be routed to an existing

5   website hosted by a third party. Thus, Go Daddy argues, absent any volitional conduct on

6   its part, it cannot be liable under a statute that requires intentional conduct.

7   Go Daddy also contends that there is no evidence of any "bad faith" intent arising

8   from its maintenance of the Disputed Domains after it was notified by Petronas of its

9   alleged trademark claims. Go Daddy asserts that the nine factors that courts may consider

10   when evaluating whether the defendant acted with bad faith intent are generally

11   inapplicable to registrars. In addition, Go Daddy notes that under § 1125(d)(1)(B)(ii), bad

12   faith intent "shall not be found in any case in which the court determines that the person

13   believed and had reasonable grounds to believe that the use of the domain name was a fair

14   use or otherwise lawful."

15   Go Daddy argues that the undisputed evidence shows that Go Daddy's intent in

16   maintaining the Disputed Domains following notice of Petronas' alleged trademark claims

17   until receipt of a transfer order was to comply with Go Daddy's standard operating

18   procedures and to implement the UDRP. Go Daddy contends that it drafted its standard

19   operating procedures to comply with the UDRP, to which it is bound under its accreditation

20   agreement with ICANN. Thus, Go Daddy took no action on Petronas' trademark claims

21   other than providing Petronas with information to assist it in obtaining a transfer order, and

22   locking each of the domain names upon notice of commencement of a legal proceeding

23   until receipt of a transfer order.

24   Go Daddy also notes that the term "bad faith" has a specific meaning in the context

25   of the ACPA. "The bad faith required to support a cypersquatting claim is not general bad

26   faith, but a 'bad faith intent to profit from the mark.'" Solid Host, NL v. Namecheap, Inc.,

27   652 F.Supp. 2d 1092, 1109 (C.D. Cal., 2009) (quoting 15 U.S.C. § 1125(d)(1)(A)(i)). Go

28   Daddy argues that there is no evidence in this case that it acted with an intent to profit, as it

1 does not charge registrants for utilizing domain name forwarding as a means of routing

2 their domain names, and it did not profit from the registrant's use of the forwarding service

3 to route the Disputed Domains to a website hosted by a third party.

4   Go Daddy asserts further that there is no evidence that it acted to profit from

5 Petronas' specific trademark. Go Daddy contends that the record shows that the registrant

6 of the Disputed Domains, in transferring the registrations to Go Daddy, represented that

7 each registration was being made "in good faith" that he had "no knowledge of it infringing

8 upon or conflicting with the legal rights of a third party or a third party's registration,

9 trademark, or trade name." Thus, Go Daddy argues, there was no basis for it to believe at

10 the time the registrations were transferred that the registrant intended any unlawful

11 conduct, and that in any event, there is no evidence that Go Daddy maintained the

12 registrations with any intent to profit from Petronas' marks.

13   In opposition, Petronas asserts that Go Daddy's argument regarding "volitional

14 conduct" is irrelevant to the cybersquatting claim, as the conduct that forms the basis of the

15 claim is Go Daddy's repeated refusal to stop forwarding the Disputed Domains after it was

16 put on notice by Petronas of the infringement of Petronas' trademarks. Petronas argues

17 that regardless of what Go Daddy claims its intent was, it is undisputed that Go Daddy took

18 no action on Petronas' trademark claims other than providing Petronas with information to

19 assist it in seeking a transfer order, and locking each domain.

20   Petronas also contends that Go Daddy "intended to profit" from Petronas' marks by

21 establishing its immunity from liability for its conduct concerning the Disputed Domains.

22 Petronas claims that because the conduct alleged in this lawsuit is the same as Go

23 Daddy's conduct with respect to as many as 9,000 other domain names over the years

24 (referring to Go Daddy's claim that it receives notice of more than 1,000 trademark claims

25 every year, out of the 8.2 million domain names for which it provides forwarding services),

26 Go Daddy's exposure to statutory damages should it be found liable for cybersquatting in

27 all those cases could potentially be between $9 million and $900 million (based on statutory

28 damages of between $1,000 and $100,000 per domain name) – not to mention possible

1   treble damages and attorney's fees. Petronas contends that the evidence shows that Go

2   Daddy was aware that it faced exposure to damages based on its provision of forwarding

3   services for its customers who use it to commit trademark infringement.

4   The court finds that the motion must be GRANTED. The forwarding of the Disputed

5   Domains does not amount to "use" of the domain names. Domain name forwarding is a

6   standard service that has been provided by Go Daddy and virtually all registrars for more

7   than a decade. Go Daddy provides forwarding services for millions of domain names under

8   its management, and has provided such service in combination with its other domain name

9   routing services since 2002 or before.

10   Go Daddy does not charge customers for domain forwarding, but rather offers this

11   routing option as part of its registration services. Go Daddy's registration customers, using

12   Go Daddy's dashboard, can configure the nameserver to forward a domain name to an

13   existing website. This automated process is accomplished without any interaction between

14   the registrant and Go Daddy personnel.

15   The evidence shows that Go Daddy simply provided the infrastructure to the

16   registrant to route the Disputed Domains to the website of his choosing. Only the domain

17   name registrant or the registrant's authorized licensee can "use" a domain name for

18   purposes of the ACPA. See 15 U.S.C. § 1125(d)(1)(D); Lockheed Martin Corp. v. Network

19   Solutions, Inc., 141 F.Supp. 2d 648, 655 (N.D. Tex. 2001) ("Lockheed II") (§ 1125(d)(1)(D)

20   expressly limits the "uses" feature to domain name registrant or registrant's authorized

21   representative). Moreover, the legislative history of the ACPA establishes that such

22   conduct cannot be considered "use." See S. Rep. 106-140 at 8-9 (concept of "use" does

23   not extend to uses of domain name made by those other than the domain name registrant,

24   such as person who includes domain name as hypertext link on web page or as part of

25   directory of Internet addresses).

26   Nor is there any evidence that the agreements between Go Daddy and the registrant

27   gave Go Daddy a "license" to use the Disputed Domains. Go Daddy's contractual right to

28   terminate service does not equate to a license to use the registrant's domain names, and

13

1 the fact that the registrant forwards the domain name through Go Daddy's systems does

2 not create a reciprocal license for Go Daddy to use the registrant's domain names.

3   Finally, there is no evidence that Go Daddy had a bad faith intent to profit from

4 Petronas' mark. The fact that the forwarding service was based on customer demand does

5 not show intent to profit specifically from Petronas' mark, and, in addition, is based on a

6 flawed premise – that Go Daddy profited from customers using its forwarding service. As

7 Go Daddy did not charge for the forwarding service, it cannot be said to have profited from

8 it. Moreover, Petronas' argument that Go Daddy sought to profit by establishing immunity

9 from liability is entirely untenable.

10   2.   Contributory cybersquatting claim

11   Both parties have moved for summary judgment as to the claim for contributory

12 cybersquatting. As an initial matter, Go Daddy argues that contributory cybersquatting is

13 not a cognizable claim, as there is no mention of contributory liability in the ACPA, and

14 because the ACPA's requirement of "bad faith intent to profit" distinguishes claims under

15 the ACPA from ordinary trademark infringement claims. Petronas responds that the claim

16 does exist, based on the legislative history, and also based on the fact that a number of

17 district courts have allowed claims for contributory cybersquatting to proceed (even though

18 no court has ever found a defendant liable for contributory cybersquatting).

19   In general, district courts that have considered the matter have found that because

20 the ACPA was enacted against the settled common law theories of contributory liability in

21 the trademark context, a judicially-created claim of contributory cybersquatting would be

22 valid. In line with these analyses, this court assumes for the sake of argument that

23 contributory liability exists under the ACPA. See, e.g., Verizon California, Inc. v.

24 Above.com, No. CV-11-0973 ABC, slip op. at 5-11 (C.D. Cal., July 13, 2011) (citing

25 Microsoft Corp. v. Shah, No. C-10-0653 RSM, 2011 WL 108954 at *1-3 (W.D. Wash., Jan.

26 12, 2011); Solid Host, NL v. Namecheap, Inc., 652 F.Supp. 2d 1092, 1111-17 (C.D. Cal.

27 2009); Ford Motor Co. v. Greatdomains.com, 177 F.Supp. 2d 635, 646-47 (E.D. Mich.

28 2001)).

1   In the Ninth Circuit, one is liable for contributory trademark infringement when he

2 has knowledge of another's infringement, and either materially contributes to or induces

3 that infringement. Perfect 10, Inc. v. Visa Int'l Serv. Ass'n, 494 F.3d 788, 795 (9th Cir.

4 2007) (summarizing other Ninth Circuit and Supreme Court formulations of "same basic

5 test" for contributory infringement liability); see also Lockheed Martin Corp. v. Network

6 Solutions, Inc., 194 F.3d 980, 984-85 (9th Cir. 1996) (defendant providing service rather

7 than product contributorily infringes when he exercises "[d]irect control and monitoring of

8 the instrumentality used by a third party to infringe the plaintiff's mark"); see also Solid

9 Host, 652 F. Supp. 2d at 1112 (under extent-of-control theory plaintiff must prove

10 defendants had knowledge and direct control/monitoring of infringing instrumentality).

11   In addition, the existence of direct infringement is a necessary element of a claim for

12 contributory infringement. Perfect 10, 494 F.3d at 795; see also Bridgeport Music, Inc. v.

13 Diamond Time, Ltd., 371 F.3d 883 (6th Cir.2004) ("Without proof of direct infringement

14 there can be no liability for contributory infringement"); Georgia-Pacific Consumer Prod. LP

15 v. Myers Supply, Inc., 2009 WL 2192721, *4 (W.D. Ark. July 23, 2009), aff'd 621 F.3d 771,

16 774 (8th Cir. 2010) (upholding summary judgment of no contributory infringement where

17 underlying behavior did not constitute direct infringement).

18   Go Daddy argues that it did not have any knowledge that the registrant was

19 cybersquatting, and there are no "special circumstances" that would justify imputing to Go

20 Daddy knowledge that the registrant registered the Disputed Domains with a bad faith

21 intent to profit from Petronas' mark. Go Daddy contends that a registrar is not normally

22 expected to ascertain the good or bad faith intent of its registrants, and that it is well

23 established that a demand from a trademark owner is not sufficient to cause such

24 knowledge to be imputed. More to the point, Go Daddy asserts, discovery has closed, and

25 Petronas has obtained no evidence to establish that the registrant had the necessary bad

26 faith intent to profit from Petronas' marks in registering the Disputed Domains, which is

27 required to establish direct cybersquatting on the part of the registrant.

28   In addition, Go Daddy argues, there is no evidence that Go Daddy induced the

15

1   registrant of the Disputed Domains to engage in cybersquatting, or any evidence that Go

2   Daddy engaged in "direct control and monitoring" of the alleged cybersquatting. Go Daddy

3   contends that a registrar cannot be expected to monitor millions of domain names a year to

4   determine whether the domain names include a trademark, and if so, to determine the

5   registrants' authorization and intent.

6   In opposition, and in support of its own motion, Petronas contends that evidence of

7   the registrant's cybersquatting is overwhelming and was known to Go Daddy. With regard

8   to Go Daddy's argument that there is no evidence of the registrant's "bad faith" intent to

9   profit, Petronas contends that in light of the court's two judgments in the in rem cases –

10 based on a finding that the Disputed Domains are confusingly similar to Petronas'

11 trademark – and also in light of the failure of the registrant or Go Daddy to point to any valid

12 reason for the registrant's use of the Disputed Domains to direct Internet traffic to a porn

13 website also owned by the registrant – it is reasonable to "infer" that the registrant acted

14 with a bad faith intent to profit.

15   Petronas also argues that the notion that discovery is needed in order to determine

16 the registrant's bad faith is "based on an extremely naïve assumption, namely that the

17 registrant would admit his bad faith intent," and that in any event, it was unable to seek

18 discovery from the registrant because it was never successful in locating him.

19   Petronas asserts that it is undisputed that the registrant of petronastowers.net

20 engaged in direct cybersquatting, from May 2, 2009, to August 30, 2010, by using Go

21 Daddy's domain name forwarding service to direct Internet traffic from the domain name

22 petronastowers.net to a pornographic website. Petronas contends that six of the nine

23 factors identified in the ACPA as indicative of a registrant's bad faith, see 15 U.S.C.

24 § 1125(d)(1)(B((i), are met with regard to this registrant.

25   Petronas argues that Go Daddy's domain name forwarding service was the

26 instrumentality used by the registrant to engage in direct cybersquatting, and that Go

27 Daddy "should have known" that the registrant was using its domain name forwarding

28 service to engage in cybersquatting, or was willfully blind to it, given that Go Daddy knew

1 the identity of the registrant accused of cybersquatting. Petronas contends that Go Daddy

2 had information (provided by Petronas' counsel) regarding the alleged cybersquatting, but

3 that it nevertheless deliberately "refused to investigate" whether the registrant was

4 committing cybersquatting.

5   Petronas argues that Go Daddy exercised direct control and monitoring of its domain

6 name forwarding service, as it is undisputed that Go Daddy employees wrote the code and

7 created the software application that implemented Go Daddy's domain name forwarding

8 service, and that it was implemented with servers owned and controlled by Go Daddy.

9 Moreover, Petronas asserts, Go Daddy was able to monitor the operation of its domain

10 name forwarding service as to petronastowers.net, and to determine where the Disputed

11 Domains were being forwarded.

12   The court finds that Go Daddy's motion must be GRANTED and Petronas' motion

13 must be DENIED. A claim for contributory cybersquatting does not exist under the

14 circumstances of this case, as a company providing an Internet routing service does not

15 exercise the type of direct control and monitoring that would justify recognition of a

16 contributory infringement claim. See Lockheed, 194 F.3d at 980.

17   Based on the evidence presented, the court is satisfied that the service at issue here

18 – domain name forwarding – is a form of routing. Permitting a contributory cybersquatting

19 claim based on a forwarding service cannot be squared with the Ninth Circuit's rejection of

20 such a claim based on the same conduct in the context of traditional trademark

21 infringement (as opposed to cybersquatting).

22   Further, Go Daddy did not exercise "direct control and monitoring" over the alleged

23 cybersquatting. Domain name registration and routing are services routinely provided by

24 registrars, and cannot be considered the type of direct control over the use of the mark that

25 is required for the application of secondary liability principles. There is no evidence that Go

26 Daddy had any control over the registrant when he registered the Disputed Domains, or

27 when he used the forwarding service.

28   What is most significant, however, is that Petronas' evidence is inadequate to

1 establish cybersquatting by the non-party registrant. In particular, there is no evidence that

2 can establish the registrant's "bad faith intent to profit" from Petronas' mark. Arguably, the

3 fact that the registrant arranged to have Internet traffic directed from the Disputed Domains

4 to a pornographic website is sufficient to show some variety of bad faith. However, the

5 record is silent as to the intent of the registrant – that is, there is absolutely no evidence of

6 bad faith <u>intent to profit</u> from Petronas' mark.

7 It is not enough to say that one can "infer" a bad faith intent to profit, even were such

8 an inference sufficient to establish that element of the claim. One could just as easily infer

9 a bad faith intent to create mischief, or a bad faith intent to annoy the owner of the

10 Petronas mark. Because Petronas has failed to present evidence sufficient to support all

11 the statutory elements of a claim of direct cybersquatting, it cannot show that Go Daddy

12 engaged in contributory cybersquatting.

13   3.   Unfair competition claims

14 GoDaddy seeks summary judgment as to the unfair competition claims, arguing that

15 there can be no claim for unfair competition in the absence of a viable cybersquatting claim.

16 Petronas does not oppose the motion. As the unfair competition claims are dependent on

17 the cybersquatting claims, the motion must be GRANTED.

18   4.   Counterclaim

19 In support of its Lanham Act claims, Petronas relies on U.S. trademark registration

20 Reg. No. 2969707, for the mark PETRONAS AND DESIGN. In its motion for summary

21 judgment as to its counterclaim, Go Daddy argues that the Petronas mark is invalid based

22 on abandonment and use exceeding the scope of the registration, and that the registration

23 should therefore be cancelled.

24 The Lanham Act gives federal courts authority to cancel an invalid trademark

25 registration. 15 U.S.C. § 1119; <u>see also</u> <u>Central Mfg., Inc. v. Brett</u>, 492 F.3d 876, 883 (7th

26 Cir. 2007) (where a registrant's asserted rights to a mark are shown to be invalid,

27 "cancellation is not merely appropriate, it is the best course"). Indeed, a court must cancel

28 a registration after finding the underlying mark is unenforceable. <u>Gracie v. Gracie</u>, 217

1   F.3d 1060, 1065-66, 1072 (9th Cir. 2000).

2   Federal courts may cancel registrations based on the same grounds that would be

3   applied by the U.S. Patent and Trademark Office ("USPTO"). D. & M. Antique Imp. Corp.

4   v. Royal Saxe Corp., 311 F. Supp. 1261, 1268 (S.D.N.Y. 1969). One such ground is

5   abandonment. 15 U.S.C. § 1064(3). Another ground is violation of the Lanham Act

6   provision concerning trademark registrations based on international conventions. Marmark

7   Ltd. v. Nutrexpa S.A., 12 U.S.P.Q.2d 1843, 1845 (T.T.A.B. 1989).

8   In opposition, Petronas argues that Go Daddy lacks standing to seek cancellation of

9   the mark. "[A] petition to cancel a registration of a mark . . . may . . . be filed by any person

10   who believes that he is or will be damaged by the registration of the mark." 15 U.S.C.

11   § 1064. In order to show standing to seek cancellation, a petitioner must show a rational

12   basis for his belief that he would be damaged by the registration sought to be cancelled,

13   "stemming from an actual commercial or pecuniary interest in his own mark." Star-Kist

14   Foods, Inc. v. P.J. Rhodes & Co., 735 F.2d 346, 349 (9th Cir. 1984); see also Halicki Films,

15   LLC v. Sanderson Sales and Marketing, 547 F.3d 1213, 1228-29 (9th Cir. 2008).

16   Petronas contends that Go Daddy has conceded that it has no commercial interest

17   in any Petronas trademark, and that it does not claim ownership in the mark. Thus,

18   Petronas asserts, Go Daddy cannot show that it has standing to seek cancellation of the

19   mark. Petronas argues further that even if Go Daddy had standing, there is no evidence of

20   abandonment, and that Go Daddy has not pointed to any evidence that would support

21   cancellation.

22   The court finds that the motion must be DENIED. As an initial matter, it appears that

23   Go Daddy has standing to seek cancellation because Petronas is using the registration as

24   a sword against Go Daddy, in that this Lanham Act lawsuit is premised on the registered

25   mark. See World Market Center Venture, LLC v. Texas Int'l Prop. Assocs., 2009 WL

26   3303758, at *3 (D. Nev. Oct. 14, 2009) ("being sued for infringement . . . is sufficient to

27   support standing for a counterclaim for cancellation"); Roxbury Entm't v. Penthouse Media

28   Group, Inc., 2009 WL 2950324, at *3 (C.D. Cal. Apr. 3, 2009). Thus, because Go Daddy is

in danger of being financially affected by Petronas assertion of its mark – even though Go Daddy does not meet the traditional qualification of a party that claims a right to use the name in the mark – Go Daddy has arguably established standing.

However, the questions whether Petronas has abandoned the mark and whether its use exceeds the scope of the underlying registration – as briefed by the parties – are less clear, not least because the court was unable to locate a number of the documents referenced in the papers. The Ninth Circuit has adopted the maxim that "[j]udges are not like pigs, hunting for truffles buried in briefs." Indep. Towers of Wash. v. Wash., 350 F.3d 925, 929 (9th Cir. 2003) (quoting United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)). The court finds, at a minimum, that there are disputed factual issues regarding the extent of any abandonment and/or use of the mark by Petronas.

CONCLUSION

In accordance with the foregoing, Go Daddy's motion for summary judgment is GRANTED as to the causes of action alleged in the FAC, and is DENIED as to the counterclaim for cancellation of registration. Petronas' motion for partial summary judgment on the contributory cybersquatting claim is DENIED.

The court will conduct a case management conference on Thursday, January 12, 2012, at 2:00 p.m., to discuss setting the counterclaim for trial, unless Go Daddy advises the court no later than 48 hours prior to the CMC that it intends to dismiss the counterclaim or that the dispute has otherwise been resolved.

IT IS SO ORDERED.

Dated: January 3, 2012

_____
PHYLLIS J. HAMILTON
United States District Judge

Ex. E

1 | JOHN L. SLAFSKY, State Bar No. 195513
DAVID L. LANSKY, State Bar No. 199952
2 | HOLLIS BETH HIRE, State Bar No. 203651
WILSON SONSINI GOODRICH & ROSATI
3 | PROFESSIONAL CORPORATION
650 Page Mill Road
4 | Palo Alto, CA 94304
Telephone: (650) 493-9300
5 | Fax: (650) 493-6811
jslafsky@wsgr.com
6 | dlansky@wsgr.com
hhire@wsgr.com
7
Attorneys for Defendant
8 | GODADDY.COM, INC.

9 | UNITED STATES DISTRICT COURT

10 | NORTHERN DISTRICT OF CALIFORNIA

11

12 | PETROLIAM NASIONAL BERHAD,   )   CASE NO.: 09-CV-5939 PJH
)
13 | Plaintiff,   )
)   **GO DADDY'S BILL OF COSTS RE**
14 | vs.   )   **PETRONAS'S CLAIMS**
)
15 | GODADDY.COM, INC.,   )
)
16 | Defendant.   )
)
17 |)
   |_____)
18 |)   Honorable Phyllis J. Hamilton
   | GODADDY.COM, INC.,   )
19 |)
   | Counterclaimant,   )
20 |)
   | vs.   )
21 |)
   | PETROLIAM NASIONAL BERHAD,   )
22 |)
   | Counterclaim Defendant.   )
23 |_____)

24

25

26

27

28

BILL OF COSTS RE PETRONAS'S CLAIMS   -1-
Case No. 4:09-cv-05939-PJH

1   Final judgment having been entered on February 16, 2012 in favor of Defendant and

2 Counterclaimant GoDaddy.com, Inc. ("Go Daddy") as to the claims asserted by Plaintiff and

3 Counterclaim Defendant Petroliam Nasional Berhad ("Petronas") (*see* Dkt. No. 174), the Clerk is

4 hereby requested to tax the following as costs pursuant to 28 U.S.C. § 1920 and Civil L.R. 54-3:

5

Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	$10,544.39
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case	$6,365.04
Total	**$16,909.43**

14   This Bill of Costs is supported by the Declaration of Joseph G. Fiorino (Exhibit A hereto),

15 an Itemized Bill of Costs (Exhibit B hereto), and corresponding invoices (Exhibit C hereto).

16

17 Dated: March 1, 2012   WILSON SONSINI GOODRICH & ROSATI
                                                         Professional Corporation
18
                                                         By: /s/ Joseph G. Fiorino
19   Joseph G. Fiorino

20

21

22

23

24

25

26

27

28

BILL OF COSTS RE PETRONAS'S CLAIMS   -2-
Case No. 4:09-cv-05939-PJH

Exhibit A:

Declaration of
Joseph G. Fiorino in support
of Go Daddy's Bill of Costs

1   JOHN L. SLAFSKY, State Bar No. 195513
    DAVID L. LANSKY, State Bar No. 199952
2   HOLLIS BETH HIRE, State Bar No. 203651
    WILSON SONSINI GOODRICH & ROSATI
3   PROFESSIONAL CORPORATION
    650 Page Mill Road
4   Palo Alto, CA 94304
    Telephone: (650) 493-9300
5   Fax: (650) 493-6811
    jslafsky@wsgr.com
6   dlansky@wsgr.com
    hhire@wsgr.com
7
    Attorneys for Defendant
8   GODADDY.COM, INC.

9   UNITED STATES DISTRICT COURT

10   NORTHERN DISTRICT OF CALIFORNIA

11   OAKLAND DIVISION

12

13   PETROLIAM NASIONAL BERHAD,   )   CASE NO.: 09-CV-5939 PJH
)
14   Plaintiff,   )
)   **DECLARATION OF JOSEPH G.**
15   vs.   )   **FIORINO IN SUPPORT OF GO**
)   **DADDY'S BILL OF COSTS RE**
16   GODADDY.COM, INC.,   )   **PETRONAS'S CLAIMS**
)
17   Defendant.   )
)
18   )
     _____   )
19   )   Honorable Phyllis J. Hamilton
     GODADDY.COM, INC.,   )
20   )
                Counterclaimant,   )
21   )
          vs.   )
22   )
     PETROLIAM NASIONAL BERHAD,   )
23   )
                Counterclaim Defendant.)
24   _____   )

25

26

27

28
     DECL. OF J. FIORINO   -1-
     ISO BILL OF COSTS RE PETRONAS'S CLAIMS
     Case No. 4:09-cv-05939-PJH

1   I, Joseph G. Fiorino, declare and state as follows:

2   1.   I am an attorney duly licensed to practice before this Court and employed by

3 Wilson Sonsini Goodrich & Rosati ("WSGR"), counsel to Defendant and Counterclaimant

4 GoDaddy.com, Inc. ("Go Daddy") in this action. I have personal knowledge of the facts set forth

5 herein, and if called as a witness, could and would testify thereto.

6   2.   I have reviewed the invoices from WSGR to Go Daddy for costs incurred in

7 relation to the claims asserted by Petroliam Nasional Berhad ("Petronas").

8   3.   I verify that all costs in Go Daddy's Bill of Costs re Petronas's Claims ("Bill of

9 Costs") submitted herewith were necessarily incurred in this action and recoverable under 28

10 U.S.C. §1920, Civil Local Rule 54-3, and relevant case law, and that the services for which fees

11 have been charged were actually and necessarily performed. The statement that the costs in Go

12 Daddy's Bill of Costs are recoverable is based on relevant judicial decisions including, without

13 limitation, *Parrish v. Manatt, Phelps & Phillips, LLP*, No. C 10-03200 WHA, 2011 WL 1362112,

14 at *2 (N.D. Cal. Apr. 11, 2011) (holding that costs incurred for "reproduction, scanning,

15 [conversion,] and imaging of client documents 'for review and potential production' or 'for initial

16 production' . . . are properly recoverable"); *Service Employees Intern. Union v. Rosselli*, No. C 09-

17 00404 WHA, 2010 WL 4502176 at *3-4 (N.D. Cal. Nov. 1, 2010) (rejecting argument "that the

18 cost of trial exhibits and electronic discovery production should not be recoverable"; overruling

19 objections to reporter's invoices listing "'rough disk' fees, 'expedited' services charges, parking

20 reimbursements, charges for court reporter 'waiting time,' charges for court reporter 'before/after

21 hours,' delivery costs, appearance and travel fees, 'video digitizing to DVD[s],' and 'video

22 synchronizing'"; and awarding over $200,000 in costs); *Hynix Semiconductor Inc. v. Rambus Inc.*,

23 697 F. Supp. 2d 1139 (N.D. Cal. 2010) ("The cost of videotaping, including video technicians

24 fees, as well as the cost of a copy of the videotape and written transcript are taxable costs";

25 awarding over $760,000 in costs); *Cargill Inc. v. Progressive Dairy Solutions, Inc.*, No. CV–F–

26 07–0349, 2008 WL 5135826, at *6 (E.D. Cal. Dec. 8, 2008) (where "case management was done

27 electronically because of the volume of documents, [and] scanning of documents was necessary to

28 provide an adequate defense to the several motions and trial presentation," such costs were

DECL. OF J. FIORINO
ISO BILL OF COSTS RE PETRONAS'S CLAIMS
Case No. 4:09-cv-05939-PJH

-2-

1 recoverable); *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009) (finding no abuse of discretion

2 in district court awarding costs to defendant in the amount of $164,814.43 for converting

3 computer data into readable format in response to plaintiffs' discovery requests); *Race Tires Am.,*

4 *Inc. v. Hoosier Racing Tire Corp.*, No. 2:07-CV-1294, 2011 WL 1748620, at *9-12 (W.D. Pa.

5 May 6, 2011) (awarding over $370,000 in electronic discovery costs where defendants "created a

6 litigation database for the purpose of complying with the e-discovery requirements . . . engaged

7 computer experts to forensically collect and image hard drives, scan documents to create

8 electronic images, process and index electronic discovery data, extract the required metadata fields

9 from electronic records, enable documents to be OCR searchable, and convert documents to the

10 required .tif format"); *Neutrino Dev. Corp. v. Sonosite, Inc.*, No. H–01–2484, 2007 WL 998636 at

11 *4 (S.D. Tex. Mar. 30, 2007) (where electronic data was produced by agreement, in lieu of paper

12 copies, the cost of production was recoverable under § 1920).

13   4.   I verify that all costs included in Go Daddy's Bill of Costs are fairly attributed to

14 the claims asserted by Petronas in this litigation.

15   5.   The invoices supporting Go Daddy's Bill of Costs are attached as Exhibit C to Go

16 Daddy's Bill of Costs.

17   6.   All but three of the depositions included in Go Daddy's Bill of Costs were required

18 pursuant to Petronas's own deposition notices, including the depositions of Go Daddy employees

19 Jeff Munson, Jeff Roling, Laurie Anderson, Jessica Hanyen (for two separate depositions), Rod

20 Simonini, Linda Jett, Ronald Hertz, Matthew Bilunes, Camile Ede, and Tracy Carlson. The

21 breadth of the Rule 30(b)(6) deposition notice served by Petronas on Go Daddy on September 21,

22 2011, seeking deposition testimony on 37 topics, made extensive deposition testimony and the

23 corresponding costs related thereto unavoidable.

24   7.   The other depositions included in Go Daddy's Bill of Costs—and the only

25 depositions noticed by Go Daddy—consist of the depositions of Petronas's Rule 30(b)(6) witness,

26 Yeoh Suat Gaik, and Petronas's two expert witnesses, Tina Dam and Kevin Fitzsimmons. These

27 depositions were necessary for Go Daddy to discover the merits of Petronas's claims against it.

28

1   The information obtained during these depositions has been used by Go Daddy in its successful

2   motion for summary judgment as to Petronas's claims.

3   8.   All of the costs included in Go Daddy's Bill of Costs for reproducing documents

4   for use in the case were necessary and related to disclosure or formal discovery documents and

5   exhibits to depositions. Over the course of the litigation Petronas served 4 rounds of document

6   requests on Go Daddy, including 57 individual document requests. In several instances Petronas's

7   document requests were extremely broad (e.g., Document Request No. 20 seeks "all documents

8   that describe or concern the reason or basis for the statement 'ICANN, the managing body of

9   internet, domain name registrars, specifically prohibits domain name registrars from becoming

10 involved in disputes over domain ownership in their Uniform Domain Name Dispute Resolution

11 Policy'…"; Document Request No. 52 seeks "all documents related to services provided by Go

12 Daddy to the registrant of the disputed domain names"). Go Daddy's responses to Petronas's

13 numerous requests and its resulting document productions necessitated the reproduction of

14 documents, many of which were also utilized in connection with depositions.

15   9.   All of the costs included in Go Daddy's Bill of Costs for "preparing [a]

16 demonstrative diagram" were necessarily incurred to prepare a visual aid (in the form of an

17 enlarged exhibit) to assist the Court in understanding the complex litigation timeline of the case.

18 This demonstrative diagram was used during the December 7, 2011 hearing on Go Daddy's

19 successful motion for summary judgment.

20

21   I declare under penalty of perjury under the laws of the United States that the foregoing is

22 true and correct. Executed February 29, 2012, at Palo Alto, California.

23

24   By: /s/ Joseph G. Fiorino
                                                 Joseph G. Fiorino
25

26

27

28

DECL. OF J. FIORINO   -4-
ISO BILL OF COSTS RE PETRONAS'S CLAIMS
Case No. 4:09-cv-05939-PJH

Ex. F

Exhibit B:

Go Daddy's
Itemized Bill of Costs

PETROLIAM NASIONAL BERHAD v. GODADDY.COM, INC.
CASE NO.: 09-CV-5939 PJH

ITEMIZED BILL OF COSTS

Item No.	Vendor	Description	Invoice Date	Invoice No.	Costs to Be Taxed
1	Cyrus Productions	Deposition transcripts, including videotaped depositions	9/15/11	2130	$1,193.75
2	Cyrus Productions	Deposition transcripts, including videotaped depositions	11/8/11	2175	$720.00
3	Cyrus Productions	Deposition transcripts, including videotaped depositions	11/11/11	2186	$819.25
4	Grossman & Cotter Inc	Deposition transcripts, including videotaped depositions	9/27/11	12378	$1,243.80
5	Grossman & Cotter Inc	Deposition transcripts, including videotaped depositions	11/15/11	12762	$1,161.76
6	Grossman & Cotter Inc	Deposition transcripts, including videotaped depositions	11/15/11	12781	$1,991.18
7	Irish Reporting, Inc.	Deposition transcripts, including videotaped depositions	10/25/11	M-9	$401.50
8	MBreporting	Deposition transcripts, including videotaped depositions	10/26/11	5317	$1,186.65
9	MBreporting	Deposition transcripts, including videotaped depositions	10/31/11	5320	$370.65
10	MBreporting	Deposition transcripts, including videotaped depositions	10/31/11	5323	$977.05
11	Diane Skillman	Deposition transcripts, including videotaped depositions	1/5/10	00004271	$37.80
12	Diane Skillman	Deposition transcripts, including videotaped depositions	9/30/10	00004377	$159.25
13	Diane Skillman	Deposition transcripts, including videotaped depositions	12/11/11	00004538	$281.75
14	Liffey Thames Group LLC	Reproducing disclosure or formal discovery documents	8/25/11	136180	$1,968.75
15	TERIS	Reproducing disclosure or formal discovery documents	7/15/11	38241	$204.35
16	TERIS	Reproducing disclosure or formal discovery documents	7/31/11	38396	$81.84
17	TERIS	Reproducing disclosure or formal discovery documents	8/24/11	38738	$96.87
18	TERIS	Reproducing disclosure or formal discovery documents	8/31/11	38811	$27.45
19	TERIS	Reproducing disclosure or formal discovery documents	8/31/11	38814	$116.18
20	TERIS	Reproducing disclosure or formal discovery documents	8/31/11	38865	$317.61
21	TERIS	Reproducing disclosure or formal discovery documents	8/31/11	38917	$49.74
22	TERIS	Reproducing disclosure or formal discovery documents	8/31/11	38918	$252.33
23	TERIS	Reproducing exhibits to depositions and/or discovery	9/13/11	38987	$113.79
24	TERIS	Reproducing disclosure or formal discovery documents	9/13/11	38990	$367.70
25	TERIS	Reproducing exhibits to depositions and/or discovery	10/7/11	10033	$247.19
26	TERIS	Reproducing exhibits to depositions and/or discovery	10/7/11	10032	$318.06
27	TERIS	Reproducing exhibits to depositions and/or discovery	10/11/11	10055	$593.60
28	TERIS	Reproducing exhibits to depositions and/or discovery	10/17/11	10148	$197.94
29	TERIS	Reproducing exhibits to depositions and/or discovery	10/18/11	10215	$91.18
30	TERIS	Reproducing disclosure or formal discovery documents	10/26/11	10413	$62.50
31	TERIS	Reproducing disclosure or formal discovery documents	10/26/11	10411	$81.71
32	TERIS	Reproducing exhibits to depositions and/or discovery	10/26/11	10412	$530.21
33	TERIS	Reproducing disclosure or formal discovery documents	10/31/11	10572	$98.72
34	TERIS	Reproducing disclosure or formal discovery documents	10/31/11	10630	$382.86
35	TERIS	Reproducing disclosure or formal discovery documents	10/31/11	10791	$32.09
36	TERIS	Reproducing disclosure or formal discovery documents	10/31/11	10632	$51.18
37	TERIS	Preparing demonstrative diagram	12/16/11	11796	$81.19
				TOTAL:	$16,909.43

Ex. G

Exhibit C:

Invoices in support of
Go Daddy's Bill of Costs

Cyrus Productions
2827 55th Ave.
Oakland, CA 94605
attn: Gary Brewer/Aline Mayer
510-326-9332

Date	9-15-2011
Invoice #:	2130
Terms:	30 Days

Bill to:

David Lasky
Wilson Sonsini
650 Page Mill Rd.
Palo Alto, CA

Witness:	Yeoh Suat Giak
Case:	Petronas vs. Godaddy.com
Date:	9/15/11

0 62160

Item	Description	Quantity	Rate	Amount
	Arrive: 8:00 Start: 10:08 Depo ended: 3:47 Break –down: 4:15 Lunch- 1 hour **Total hrs: 7.25 hrs**	7.25 hrs	95.00	$688.75
3	DVD Sync Copies		$165.00	$495.00
Shipping				$10.00
			TOTAL	$1193.75

ok to PJH

matter 33236.510

VENDOR ID CyK
NEW ___ REACTIVATED ___
W-9 ___ 1099- MISC ___
WIRE ___ WIRE FORM ___

Cyrus Productions
2827 55ᵗʰ Ave.
Oakland, CA 94605
attn: Gary Brewer/Aline Mayer
510-326-9332

Date	11-8-2011
Invoice #:	2175
Terms:	30 Days

Bill to:	
John Slafsky Wilson Sonsini 650 Page Mill Rd. Palo Alto, CA	

Witness:	Kevin Fitzsimmons
Case:	Petronas vs. Godaddy.com
Date:	9/15/11

Item	Description	Quantity	Rate	Amount
	Arrive: 8:30 Start: 9:30 Depo ended: 12:00 Break –down: 12:00 Lunch- 0 hour **Total hrs: 4 hrs**	4 hrs	95.00	$380.00
2	DVD Sync Copies		$165.00	$330.00
Shipping				$10.00
			TOTAL	$720.00

0 6237

Cyrus Productions
2827 55th Ave.
Oakland, CA 94605
attn: Gary Brewer/Aline Mayer
510-326-9332

Date	11-11-2011
Invoice #:	2186
Terms:	30 Days

Bill to:	

John Slafsky
Wilson Sonsini
650 Page Mill Rd.
Palo Alto, CA

Witness:	Tina Dam
Case:	Petronas vs. Godaddy.com
Date:	11/11/11

Item	Description	Quantity	Rate	Amount
	Arrive: 8:30 Start: 9:26 Depo ended: 12:47 Break –down: 1:15 Lunch- 0 hour **Total hrs: 4.75 hrs**	4.75 hrs	95.00	$451.25
3 Discs	DVD Sync Copies * only billing for 2 Discs, Disc #3 was only 1 minute long!		$165.00	$330.00
Parking				$8.00
Shipping	(FedEx from Los Angeles included)			$30.00
			TOTAL	$819.25

The Gc Daddy Group
33236.51C... CLS

INVOICE

SSMAN & COTTER INC.
7 S. CALIFORNIA AVENUE, SUITE D-201
ALO ALTO CA 94306
Phone:(650) 324-1181   Fax:(650) 324-4609

Invoice No.	Invoice Date	Job No.
12378	9/27/2011	6354
Job Date	**Case No.**	
9/15/2011	09-CV-5939 PJH	
Case Name		
PETROLIAM NASIONAL BERHAD VS. GODADDY.COM		
Payment Terms		
DUE UPON RECEIPT		

DAVID L. LANSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

CoRoo1.
PA

ORIGINAL + ONE ELECTRONIC COPY OF TRANSCRIPT OF:

YEOH SUAT GAIK		848.70
Exhibit	419.00 Pages	167.60
Certification Fee - Original		35.00
Rough Draft	142.00 Pages	177.50
Shipping & Handling of Original in 30 Days		15.00

TOTAL DUE >>>		**$1,243.80**
AFTER 10/27/2011 PAY		$1,368.18

OK

Thank you for choosing Grossman & Cotter for your reporting needs! Your business is greatly appreciated.

charge to: 33236-511
DPT

61745

Tax ID: 93-0989081

Please detach bottom portion and return with payment.

DAVID L. LANSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

POSTED

SEP   2011

WILSON, SONSINI
GOODRICH & ROSATI

Job No.	: 6354	BU ID	:1-MAIN
Case No.	: 09-CV-5939 PJH		
Case Name	: PETROLIAM NASIONAL BERHAD VS. GODADDY.COM		
Invoice No.	: 12378	Invoice Date	:9/27/2011

Total Due : **$ 1,243.80**
AFTER 10/27/2011 PAY $1,368.18

Remit To: **GROSSMAN & COTTER INC.**
117 S. CALIFORNIA AVENUE, SUITE D-201
PALO ALTO CA 94306

PAYMENT WITH CREDIT CARD   AMEX   [MASTERCARD]   [VISA]

Cardholder's Name:

Card Number:

Exp. Date: Phone#:

Billing Address:

Zip: Card Security Code:

Amount to Charge:

Cardholder's Signature:

INVOICE

GROSSMAN & COTTER INC.
117 S. CALIFORNIA AVENUE, SUITE D-201
PALO ALTO CA 94306
Phone:(650) 324-1181   Fax:(650) 324-4609

Invoice No.	Invoice Date	Job No.
12762	11/15/2011	6609
Job Date	**Case No.**	
11/8/2011	09-CV-5939 PJH	
Case Name		
PETROLIAM NASIONAL BERHAD VS. GODADDY.COM		
Payment Terms		
DUE UPON RECEIPT		

JOHN SLAFSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

EXPEDITED ORIGINAL AND 1 CERTIFIED ELECTRONIC COPY OF TRANSCRIPT
OF:

KEVIN FITZSIMMONS		800.86
Exhibit	521.00 Pages	208.40
Certification Fee - Original		35.00
Rough Draft	82.00 Pages	102.50
Shipping & Handling of Original in 30 Days		15.00
	TOTAL DUE >>>	**$1,161.76**
	AFTER 12/15/2011 PAY	$1,277.94

Thank you for choosing Grossman & Cotter for your reporting needs! Your business is greatly appreciated.

The Go Daddy Group
38236.510   DPT.

Tax ID: 93-0989081

062376

Please detach bottom portion and return with payment.

JOHN SLAFSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

Job No.   : 6609   BU ID   : 1-MAIN
Case No.   : 09-CV-5939 PJH
Case Name : PETROLIAM NASIONAL BERHAD VS.
                   GODADDY.COM
Invoice No. : 12762   Invoice Date : 11/15/2011
Total Due : $ 1,161.76
AFTER 12/15/2011 PAY $1,277.94

Remit To: **GROSSMAN & COTTER INC.**
          117 S. CALIFORNIA AVENUE, SUITE D-201
          PALO ALTO CA 94306

PAYMENT WITH CREDIT CARD	AMEX	VISA
Cardholder's Name:		
Card Number:		
Exp. Date:	Phone#:	
Billing Address:		
Zip:	Card Security Code:	
Amount to Charge:		
Cardholder's Signature:		

INVOICE

GROSSMAN & COTTER INC.
117 S. CALIFORNIA AVENUE, SUITE D-201
PALO ALTO CA 94306
Phone:(650) 324-1181 Fax:(650) 324-4609

Invoice No.	Invoice Date	Job No.
12781	11/15/2011	6610
Job Date	**Case No.**	
11/11/2011	09-CV-5939 PJH	
Case Name		
PETROLIAM NASIONAL BERHAD VS. GODADDY.COM		
Payment Terms		
DUE UPON RECEIPT		

JOHN SLAFSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

EXPEDITED ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

TINA DAM		1,439.46
Exhibit	670.00 Pages	268.00
Certification Fee - Original		35.00
ASCII & Condensed		16.00
Rough Draft	145.00 Pages	181.25
Shipping & Handling - Exhibits		51.47

TOTAL DUE >>>   **$1,991.18**
AFTER 12/15/2011 PAY $2,190.30

0 6237

Thank you for choosing Grossman & Cotter for your reporting needs! Your business is greatly appreciated.

Tax ID: 93-0989081

Please detach bottom portion and return with payment.

JOHN SLAFSKY, ESQ.
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304

Job No.	: 6610	BU ID	:1-MAIN
Case No.	: 09-CV-5939 PJH		
Case Name	: PETROLIAM NASIONAL BERHAD VS. GODADDY.COM		
Invoice No.	: 12781	Invoice Date	:11/15/2011

Total Due : $ 1,991.18
AFTER 12/15/2011 PAY $2,190.30

PAYMENT WITH CREDIT CARD

Cardholder's Name:

Card Number:

Exp. Date: Phone#:

Billing Address:

Zip: Card Security Code:

Amount to Charge:

Cardholder's Signature:

Remit To: **GROSSMAN & COTTER INC.**
117 S. CALIFORNIA AVENUE, SUITE D-201
PALO ALTO CA 94306

1AD11

POSTED

NUV 03 2011

WILSON SONSINI
GOODRICH & ROSATI

62171#

LUP

Irish Reporting, Inc.

RECEIVED

Payable to:
Angela Maddux, CSR, RPR
482 Fox Run Drive
North Liberty, IA 52317

OCT 28 2011

ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

Invoice

Date	Invoice #
10/25/2011	M-9

David Lansky Attorney at Law 650 Page Mill Road Palo Alto, CA 94304	Petronas v. GoDaddy.com Oakland Division, California No. 09-CV-5939

Date	Deposition(s) of	Description	Quantity	Rate	Amount
10/19/2011	Jeff Munson John Roling	Transcript Copy Transcript Copy Exhibit Copie (B&W) Postage	37 55 26	1.50 1.50 10.00 3.50	55.50 82.50 260.00 3.50

CSR

Thank you very much for your business.

Total	**$401.50**

EIN - 26-4303597

VENDOR ID
NEW ___ REACTIVATED ___
W-9 _x_ 1099- MISC _x_
WIRE ___ WIRE FORM ___

MBR√

INVOICE

MBreporting
111 Deerwood Road, Suite 200
San Ramon, California 94583
(o) 925-989-6080   (f) 925-264-1957
depos@MBreporting.com

POSTED

62331#

NOV 18 2011

WILSON SONSINI
GOODRICH & ROSATI

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Invoice No.	Invoice Date	Job No.
5317	10/26/2011	1180
Job Date	**Case No.**	
10/12/2011	09-CV-5939 PJH	
Case Name		
Berhad/Petronas v. GoDaddy		
Payment Terms		
Due upon receipt		

ONE COPY - CERTIFIED TRANSCRIPT:				
Laurie Anderson	76.00 Pages	@	3.00	228.00
Certificate - Certified Copy			5.00	5.00
ASCII, Condensed & Word Index			0.00	0.00
Electronic Exhibits (251-500 pages)			150.00	150.00
Rough Draft	70.00 Pages	@	1.50	105.00
ONE COPY - CERTIFIED TRANSCRIPT:				
Jessica Hanyen	90.00 Pages	@	3.00	270.00
Certificate - Certified Copy			5.00	5.00
ASCII, Condensed & Word Index			0.00	0.00
Electronic Exhibits (251-500 pages)			150.00	150.00
Rough Draft	84.00 Pages	@	1.50	126.00
Shipping & Handling - 100			9.65	9.65
ONE COPY - CERTIFIED TRANSCRIPT:				
Rod Simonini	26.00 Pages	@	3.00	78.00
Certificate - Certified Copy			5.00	5.00
ASCII, Condensed & Word Index			0.00	0.00
Electronic Exhibits (51-100 pages)			25.00	25.00
Rough Draft	20.00 Pages	@	1.50	30.00

VENDOR ID MBR-01
NEW __ REACTIVATED __
W-9 _ 1099- MISC __
WIRE __ WIRE FORM __

Tax ID: 27-2367368

Please detach bottom portion and return with payment.

ok & pay

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Invoice No.	:	5317
Invoice Date	:	10/26/2011
Total Due	:	**$ 1,186.65**

charge to
godaddy (petronas) DP-I
33236. 5/1/

Job No.	:	1180
BU ID	:	1-MAIN
Case No.	:	09-CV-5939 PJH
Case Name	:	Berhad/Petronas v. GoDaddy

Remit To: **MBreporting**
111 Deerwood Road, Suite 200
San Ramon, CA 94583

62488#

INVOICE

MBreporting
111 Deerwood Road, Suite 200
San Ramon, California 94583
(o) 925-989-6080   (f) 925-264-1957
depos@MBreporting.com

POSTED

NOV 29 2011

WILSON SONSINI
GOODRICH & ROSATI

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Invoice No.	Invoice Date	Job No.
5320	10/31/2011	1181
Job Date	**Case No.**	
10/13/2011	09-CV-5939 PJH	
Case Name		
Berhad/Petronas v. GoDaddy		
Payment Terms		
Due upon receipt		

ONE COPY - CERTIFIED TRANSCRIPT:					
Linda Jett		21.00 Pages	@	3.00	63.00
Certificate - Certified Copy				5.00	5.00
ASCII, Condensed & Word Index	POSTED			0.00	0.00
Electronic Exhibits (1-25 pages)				7.50	7.50
Rough Draft	NOV 29 2011	14.00 Pages	@	1.50	21.00
ONE COPY - CERTIFIED TRANSCRIPT:					
Ronald Hertz	WILSON SONSINI	20.00 Pages	@	3.00	60.00
Certificate - Certified Copy	GOODRICH & ROSATI			5.00	5.00
ASCII, Condensed & Word Index				0.00	0.00
Electronic Exhibits (51-100 pages)				25.00	25.00
Rough Draft		23.00 Pages	@	1.50	34.50
Shipping & Handling - 100				9.65	9.65
ONE COPY - CERTIFIED TRANSCRIPT:					
Matthew Bilunes		32.00 Pages	@	3.00	96.00
Certificate - Certified Copy				5.00	5.00
ASCII, Condensed & Word Index				0.00	0.00
Rough Draft		26.00 Pages	@	1.50	39.00
		TOTAL DUE >>>			**$370.65**

Tax ID: 27-2367368

Please detach bottom portion and return with payment.

ok to pay
35236.1/0/CSR

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

RECEIVED

NOV 22 2011

ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

Remit To: **MBreporting**
111 Deerwood Road, Suite 200
San Ramon, CA 94583

Invoice No.	:	5320
Invoice Date	:	10/31/2011
Total Due	:	**$ 370.65**
Job No.	:	1181
BU ID	:	1-MAIN
Case No.	:	09-CV-5939 PJH
Case Name	:	Berhad/Petronas v. GoDaddy

ϺBRϼι

POSTED

INVOICE

MBreporting
111 Deerwood Road, Suite 200
San Ramon, California 94583
(o) 925-989-6080   (f) 925-264-1957
depos@MBreporting.com

NOV 10 2011

WILSON SONSINI
GOODRICH & ROSATI

62468

Invoice No.	Invoice Date	Job No.
5323	10/31/2011	1183
Job Date	**Case No.**	
10/20/2011	09-CV-5939 PJH	
Case Name		
Berhad/Petronas v. GoDaddy		
Payment Terms		
Due upon receipt		

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

ONE EXPEDITED COPY - CERTIFIED TRANSCRIPT:				
Camile Ede				
3-Day Expedite	51.00 Pages	@	3.00	153.00
Certificate - Certified Copy				122.40
ASCII, Condensed & Word Index			5.00	5.00
Electronic Exhibits (1-25 pages)			0.00	0.00
Rough Draft			7.50	7.50
Shipping & Handling - 100	45.00 Pages	@	1.50	67.50
ONE EXPEDITED COPY - CERTIFIED TRANSCRIPT:			9.65	9.65
Jessica Hanyen				
3-Day Expedite	41.00 Pages	@	3.00	123.00
Certificate - Certified Copy				98.40
ASCII, Condensed & Word Index			5.00	5.00
Electronic Exhibits (26-50 pages)			0.00	0.00
Rough Draft			15.00	15.00
ONE EXPEDITED COPY - CERTIFIED TRANSCRIPT:	17.00 Pages	@	1.50	25.50
Tracy Carlson				
3-Day Expedite	26.00 Pages	@	3.00	78.00
Certificate - Certified Copy				62.40
			5.00	5.00

Tax ID: 27-2367368

Please detach bottom portion and return with payment.

David Lansky, Attorney at Law
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

RECEIVED

NOV 2 4 2011

ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

Invoice No.	:	5323
Invoice Date	:	10/31/2011
Total Due	:	**$ 977.05**

33236 S/0/CSP.

Remit To: **MBreporting**
111 Deerwood Road, Suite 200
San Ramon, CA 94583

Job No.	:	1183
BU ID	:	1-MAIN
Case No.	:	09-CV-5939 PJH
Case Name	:	Berhad/Petronas v. GoDaddy

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT/CALILFORNIA

INVOICE NO: 00004271

━MAKE CHECKS PAYABLE TO:━

HOLLIS B. HIRE, ESQUIRE
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304   **RECEIVED**

Phone:

JAN 1 2 2010

SK184   ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH

DIANE SKILLMAN
OFFICIAL COURT REPORTER - USDC
1301 CLAY STREET - SUITE 490-S
OAKLAND, CA 94612

Phone: (510) 451-2930

Tax ID: 560-02-9986
Diane_Skillman@cand.uscourts.gov

	DATE ORDERED:	DATE DELIVERED:
☐ CRIMINAL ☒ CIVIL	01-04-2010	01-05-2010

Case Style: C09-5939 PJH, PETROLIAM NASIONAL BERHAD v GO DADDY.COM

TWO TRANSCRIPTS - 12/23/09 HEARING (EMAILED & PAPER)

CATEGORY	ORIGINAL			1ST COPY			2ND COPY			TOTAL CHARGES
	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	
Ordinary			~~544 23~~							
14-Day										
Expedited										
Daily				18	1.20	21.60	18	0.90	16.20	37.80
Hourly										
Realtime										
Misc. Desc.						MISC. CHARGES:				

TOTAL:	37.80
LESS DISCOUNT FOR LATE DELIVERY:	
TAX (If Applicable):	
LESS AMOUNT OF DEPOSIT:	
TOTAL REFUND:	
TOTAL DUE:	$37.80

33286-57

Go Doddy/Petroliam

Date Paid: **Amt:**

ADDITIONAL INFORMATION
Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the ordinary delivery rate.

CERTIFICATION
I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.

SIGNATURE   DATE

(All previous editions of this form are cancelled and should be destroyed)

(Rev. 11/07)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT/CALILFORNIA

INVOICE NO: 00004377

JOHN L. SLAFSKY, ESQUIRE
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304

5 7 3 8 0 #

Phone:

MAKE CHECKS PAYABLE TO:

DIANE SKILLMAN
OFFICIAL COURT REPORTER - USDC
1301 CLAY STREET - SUITE 490-S
OAKLAND, CA 94612

Phone: (510) 451-2930

Tax ID: 560-02-9986
Diane_Skillman@cand.uscourts.gov

| | CRIMINAL | X CIVIL | DATE ORDERED: 09-09-2010 | DATE DELIVERED: 09-30-2010 |

Case Style: C-09-5939 PJH, PETROLIUM NASIONAL BERHAD v GODADDY.COM INC.

ORIGINAL PLUS ONE TRANSCRIPT - (EMAILED & PAPER) 9/8/10 HEARING

CATEGORY	ORIGINAL			1ST COPY			2ND COPY			TOTAL CHARGES
	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	
Ordinary	35	3.65	127.75	35	0.90	31.50				159.25
14-Day										
Expedited										
Daily										
Hourly										
Realtime										
Misc. Desc.							MISC. CHARGES:			

POSTED

	TOTAL:	159.25
	LESS DISCOUNT FOR LATE DELIVERY:	
	TAX (If Applicable):	
	LESS AMOUNT OF DEPOSIT:	
	TOTAL REFUND:	
Date Paid:	**Amt:**	TOTAL DUE:	$159.25

ADDITIONAL INFORMATION
Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the ordinary delivery rate.

CERTIFICATION
I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.

SIGNATURE   DATE 1-30-10

(All previous editions of this form are cancelled and should be destroyed)

327578

SK104

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT/CALILFORNIA
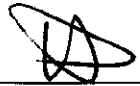
INVOICE NO: 00004538

MAKE CHECKS PAYABLE TO:

JOHN L. SLAFSKY, ESQUIRE
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304

Phone:

DIANE SKILLMAN
OFFICIAL COURT REPORTER - USDC
1301 CLAY STREET - SUITE 490-S
OAKLAND, CA 94612

Phone: (510) 451-2930

Tax ID: 560-02-9986
Diane_Skillman@cand.uscourts.gov

☐ CRIMINAL ☒ CIVIL	DATE ORDERED: 12-07-2011	DATE DELIVERED: 12-11-2011

Case Style: C-09-5939 PJH, PETROLIUM NASIONAL BERHAD v GODADDY.COM, INC

ORIGINAL PLUS TWO TRANSCRIPTS - 12/7/11 HEARING

CATEGORY	ORIGINAL			1ST COPY			2ND COPY			TOTAL CHARGES
	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	PAGES	PRICE	SUBTOTAL	
Ordinary										
14-Day										
Expedited	49	4.85	237.65	49	0.90	44.10				281.75
Daily										
Hourly										
Realtime										

Misc. Desc.	MISC. CHARGES:	
	TOTAL:	281.75
	LESS DISCOUNT FOR LATE DELIVERY:	
	TAX (If Applicable):	
	LESS AMOUNT OF DEPOSIT:	
	TOTAL REFUND:	
Date Paid:	TOTAL DUE:	$281.75

33236.510 | CSK
GoDaddy.com

RECEIVED

DEC 13 2011

ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

ADDITIONAL INFORMATION
Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the ordinary delivery rate.

CERTIFICATION
I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.

SIGNATURE	DATE 12-12-11

(All previous editions of this form are cancelled and should be destroyed)

68

SF Data

Search   Find   Litigate

037519

Invoice

Date	Invoice #
8/25/2011	136180

Bill To

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

100 California Street, Suite 800, San
Francisco, CA 94111
Phone 415-392-2900
Fax 415-392-2902
Tax I.D. 48-1302642

Please Remit Payments To:
Liffey Thames Group, LLC
File 31336
P.O. Box 60000
San Francisco, CA 94160

Contact	Case #
Brent Winfield	GoDaddy

Qty	Description	Rate	Amount
	EDD: ELECTRONIC DATA DISCOVERY: VOLUMES GODADDY-EML001 & GD003 Follow Detailed Special Instructions		
1.25	Forensic Technician - per hour: Convert EML files to HTML and stage for processing	275.00	343.75
3.5	Production - per hour: Convert HTML files to multi page tiff; build PDF images; create cross reference; upload to FTP	250.00	875.00
3	Project Management - per hour: Work on specs with client; submit work orders internally; tracking and internal emails	250.00	750.00
	DELIVERED via FTP - August 13, 2011 THANK YOU		

05936.0 /CLS

RECEIVED
DEC 12 2011

Sales Tax (9.5%)	$0.00
Total	$1,968.75
Balance Due	$1,968.75

Received By:

TERMS: This invoice is due and payable within 10 days of invoice date and past due after 30 days. The party which requested the work performed shall be solely responsible for payment. 18% per annum or minimum of $10 will be charged on all overdue invoices. Your signature or electronic confirmation of acceptance is an agreement that the above described work has been authorized, received and that you agree to these terms.

INVOICE

DATE	INVOICE #
7/15/2011	38241

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11076036	due upon rec...	DT		Patrick M	33236.510

Case Name		2nd Reference	
	Go Daddy		Prepare GD-Production

Qty.	Description	Item	Amount
	Pickup Date: 7/11/11		
	Bates Range: GD-000001 - GD-000563		
	Media Volume Name: GD_001		
1	Mid-Level Tech Time (Time to replace the documents) @ $125/hour	4226 - Mid-Level ...	125.00T
563	File Conversion to Tiff Image - w-Searchable Text @ $.05/page	4305 - File Conve...	28.15T
563	Image Endorsing (Bates Numbers and/or Annotations) @ $.01/page	4218 - Image End...	5.63T
1	Master CD-ROM (Produced with project) @ $10/disk	4219 - Master CD...	10.00T
2	CD-ROM Duplication @ $10/disk	4222 - CD-ROM ...	20.00T
	Sales Tax		15.57

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our term...

RECEIVED

JUL 19 2011

ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

Total	$204.35
Payments/Credits	$0.00
Balance Due	$204.35

INVOICE

DATE	INVOICE #
7/31/2011	38396

TERIS

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11076113	due upon rec...	DT		Patrick M	33236.510

Case Name	GoDaddy	2nd Reference	Petronas / trademark policies		

Qty.	Description	Item	Amount
	Pickup Date: 7/25/11		
	Bates Range: GD-000564 - GD-000569		
15	Convert PDF to TIFF @ $.04/page	4312 - Convert TI...	0.60T
1	Mid-Level Tech Time (add to production) @ $75/hour	4226 - Mid-Level ...	75.00T
	Sales Tax		6.24

RECEIVED
AUG 4 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

Total	$81.84

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

Payments/Credits	$0.00
Balance Due	$81.84

TERIS

www.teris.com

Please Pay From This Invoice

Date	Invoice
8/24/2011	38738

emailed 8/24/11

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel (650) 213-0922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086079	due upon receipt	DT		Alex C	33236.510

Case Name		2nd Reference		GD000317D	
	GnDaddy				A Castellanos

Qty	Description	Item	Amount
	Pickup Date 8-11-11		
	Bates Range GD-000579 - GD-000613		
35	Convert PDF to TIFF @ $.04/page	4312 - Convert TI	1.40T
35	Image Endorsing (Bates Numbers and/or Annotations) @ $.01/page	4218 - Image End	0.35T
0.5	High-Level Tech Time (Time to prep production) @ $125/hour	4227 - High-Level	62.50
3	Master CD-ROM (Produced with project) @ $10/disk	4219 - Master CD	30.00T

RECEIVED

ok to pay

PAID
SEP 14 2011

		Subtotal	$94.25
The American Legal Reprographics PA LLC d/b/a TERIS customer is ultimately responsible for payment within our terms		Sales Tax (8.25%)	$2.62
Received & Approved Date		TOTAL	$96.87

TERIS

www.teris.com

Please Pay From This Invoice

Date	Invoice
8/31/2011	38811

Bill To

Wilson Sonsini Goodrich & Rosati
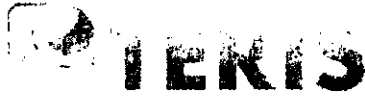650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Silicon Valley
266 Lambert Ave
Palo Alto, CA 94306
Tel (650) 213 9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086073	due upon receipt	DT		Brett W	

Case Name		2nd Reference	TIF for redaction	
GoDaddy				B Winfield

Qty	Description	Item	Amount
834	Pickup Date: 8-10-11 File Conversion to Tiff image - w Searchable Text @ $ .04/page	4305 File Conve	25.36T

PAID

SEP 1 4 2011

RECEIVED
SEP 8 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

The American Legal Reprographics - PA, LLC
d/b/a TERIS customer is ultimately responsible
for payment within our terms

Subtotal	$25.36
Sales Tax (8.25%)	$2.09
TOTAL	**$27.45**

Received & Approved _____ Date 9/8/11

Past due balances may be turned over to a collection agency and clients are responsible for any collections fees, legal fees, court costs and any other related costs associated with the collection of a past due balance.

INVOICE

DATE	INVOICE #
8/31/2011	38814

PIERIS

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086135	due upon rec...	DT		Patrick M	33236.510

Case Name		2nd Reference	
	GoDaddy		

Qty.	Description	Item	Amount
	2nd Ref: Print redactions and clean versions		
	Pickup Date: 8-25-11		
584	Native Reconstructed Blowbacks @ $.12/page	4213 - Native Rec...	70.08T
149	Alpha or Numeric Tabs @ $.25/each	4115 - Alpha or N...	37.25T
	Sales Tax		8.85

Total	$116.18

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

Payments/Credits	$0.00
Balance Due	$116.18

INVOICE

DATE	INVOICE #
8/31/2011	38865

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086166	due upon rec...	DT		Patrick M	33236.510

Case Name		2nd Reference	
	GoDaddy		Pet prod

Qty.	Description	Item	Amount
2,445	Pickup Date: 8-30-11 Native Reconstructed Blowbacks @ $.12/page Sales Tax	4213 - Native Rec...	293.40T 24.21

Total	$317.61

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

Payments/Credits	$0.00
Balance Due	$317.61

INVOICE

DATE	INVOICE #
8/31/2011	38917

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086171	due upon rec...	DT		Patrick M	33236.510

Case Name	GoDaddy	2nd Reference	GD production

Qty.	Description	Item	Amount
	Pickup Date: 8-31-11		
	Bates Range: GD-002446 - GD-002550		
105	Convert Color Native Files to JPEG @ $.10/page	4313 - Convert C...	10.50T
105	OCR - Optical Character Recognition @ $.04/page	4229 - OCR - Opti...	4.20T
0.25	Mid-Level Tech Time (To prepare production) @ $125/hour	4226 - Mid-Level ...	31.25T
	Sales Tax		3.79

		Total	$49.74

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

	Payments/Credits	$0.00
	Balance Due	$49.74

INVOICE

DATE	INVOICE #
8/31/2011	38918

TERIS

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11086179	due upon rec...	DT		Patrick M	33236.510
Case Name	GoDaddy		2nd Reference	3 CDs BB plus create doc break	

Qty.	Description	Item	Amount
	Pickup Date: 8-30-11		
0.5	Mid-Level Tech Time (To Re-Unitize) @ $75/hour	4226 - Mid-Level ...	37.50T
2,445	Blowbacks - 8.5x11 (B&W) @ $.08/page	4212 - Blowbacks...	195.60T
	Sales Tax		19.23

Total	$252.33
Payments/Credits	$0.00
Balance Due	$252.33

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

INVOICE

DATE	INVOICE #
9/13/2011	38987

TERIS

BILL TO
Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304-1050 (650) 493-9300

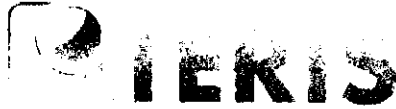| PLEASE PAY |
|------------|
| TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974 |

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11096059	due upon rec...	DT		Patrick M	33236.510

Case Name	GoDaddy		2nd Reference	Petronas depo binder	

Qty.	Description	Item	Amount
876	Pickup Date: 9-9-11 Native Reconstructed Blowbacks @ $.12/page Sales Tax	4213 - Native Rec...	105.12T 8.67

Total	$113.79
Payments/Credits	$0.00
Balance Due	$113.79

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is ultimately responsible for payment within our terms.

INVOICE

TERIS

DATE	INVOICE #
9/13/2011	38990

BILL TO

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

PLEASE PAY

TERIS - Silicon Valley
268 Lambert Ave
Palo Alto, CA 94306
Tel: (650) 213-9922
Tax ID# 30-0067974

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11096015	due upon rec...	DT		Patrick M	33236.510

Case Name	GoDaddy		2nd Reference	Print GoDaddy docs	

Qty.	Description	Item	Amount
4,246	Pickup Date: 9-2-11 Blowbacks - 8.5x11 (B&W) @ $.08/page Sales Tax	4212 - Blowbacks...	339.68T 28.02

Total	$367.70
Payments/Credits	$0.00
Balance Due	$367.70

The American Legal Reprographics - PA, LLC d/b/a TERIS customer is
ultimately responsible for payment within our terms.

TERIS
www.teris.com

Please Pay From This Invoice

Date	Invoice
10/7/2011	10033

K ..5

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

TER#6

Please Pay

TERIS - Bay Area
268 Lambert Street
Palo Alto CA 94306

(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106035	due upon receipt	DT	10/7/2011	Virgina Guerrero	33236.510

Case Name		Go Daddy	2nd Reference	Hanyen,Simonini,Anderson Depre	

Qty	Description	Item	Amount
	Pickup Date: 10/06/2011		
1,555	Standard Litigation Copying - Obstacles Every 12 or More Pages @ $.12/page	4103-Standard Liti...	186.60T
77	Alpha or Numeric Tabs @ $.25/each	4115-Alpha or Nu...	19.25T
1	1' Regular Binder @ $5/each	4132-1' Regular Bi...	5.00T
1	2' Regular Binder @ $7.50/each	4131-2' Regular Bi...	7.50T
1	3' Regular Binder @ $10/each	4130-3' Regular Bi...	10.00T

RECEIVED
OCT 1 8 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

POSTED
OCT 2 5 2011

62031
OK to pay

PAID
OCT 2 7 2011

	Subtotal		$228.35

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

	Sales Tax (8.25%)	$18.84
	Payments/Credits ·	$0.00

Received & Approved	Date	TOTAL	$247.19

TERIS
www.teris.com

Please Pay From This Invoice

Date	Invoice
10/7/2011	10032

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Street
Palo Alto CA 94306

(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106030	due upon receipt	DT	10/7/2011	Joyce Hill	33236.510

Case Name		2nd Reference	
Go Daddy		Josh,Hertz,Bilunes Dep Prep	

Qty	Description	Item	Amount
	Pickup Date: 10/06/2011		
1,861	Standard Litigation Copying - Obstacles Every 12 or More Pages @ $.12/page	4103-Standard Liti...	223.32T
87	Custom Divider Tabs @ $.50/each	4116-Custom Divid...	43.50T
3	2' Regular Binder @ $7.50/each	4131-2' Regular Bi...	22.50T
3	Custom Spines Created @ $1.50/spine	4133-Custom Spin...	4.50T

RECEIVED
OCT 19 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

POSTED
OCT 2 5 2011

62031

PAID
OCT 2 7 2011

	Subtotal		$293.82

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

	Sales Tax (8.25%)	$24.24
	Payments/Credits	$0.00

Received & Approved	Date 10/18/11	TOTAL	$318.06

Past due balances may be turned over to a collection agency and clients are responsible for any collections fees, legal fees, court costs and any other related costs associated with the collection of a past due balance.

TERIS

www.teris.com

Please Pay From This Invoice

Date	Invoice
10/11/2011	10055

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Street
Palo Alto CA 94306

(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106055	due upon receipt	DT	10/11/2011	Virginia Guerrero	33236.510

| Case Name | GO DADDY | | 2nd Reference | Jody Kolker 6 Sets | |

Qty	Description	Item	Amount
	Pick-up date: 10/10/11		
3,788	Standard Litigation Copying - Obstacles Every 12 or More Pages @ $.12/page	4103-Standard Liti...	454.56T
8	Color Copying - 8.5x11 @ $.60/page	4113-Color Copyin...	4.80T
336	Alpha or Numeric Tabs @ $.25/each	4115-Alpha or Nu...	84.00T
10	Custom Divider Tabs @ $.50/each	4116-Custom Divid...	5.00T

RECEIVED
OCT 19 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

POSTED
OCT 25 2011

PAID
OCT 27 2011

| **Subtotal** | | | $548.36 |

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

	Sales Tax (8.25%)	$45.24
	Payments/Credits	$0.00

| Received & Approved | Date | **TOTAL** | $593.60 |

Past due balances may be turned over to a collection agency and clients are responsible for any collections fees, legal fees, court costs and any other related costs associated with the collection of a past due balance.

TERIS
www.teris.com

Please Pay From This Invoice

Date	Invoice
10/17/2011	10148

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Street
Palo Alto CA 94306

(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106042	due upon receipt	DT	10/17/2011	Virginia Guerrero	33236.510

Case Name	Go Daddy	2nd Reference	SEE BODY

Qty	Description	Item	Amount
	2nd Reference: Anderson, Hanyen, Simonini Dep Rep		
	Pickup Date: 10/07/11		
1,180	Standard Litigation Copying - Obstacles Every 12 or More Pages @ $.12/page	4103-Standard Liti...	141.60T
67	Alpha or Numeric Tabs @ $.25/each	4115-Alpha or Nu...	16.75T
1	1' Regular Binder @ $5/each	4132-1' Regular Bi...	5.00T
2	2' Regular Binder @ $7.50/each	4131-2' Regular Bi...	15.00T
3	Custom Spines Created @ $1.50/sp...	4133-Custom Spi...	4.50T

RECEIVED
OCT 19 2011
ACCOUNTS PAYABLE
WILSON SONSINI
GOODRICH & ROSATI

POSTED
OCT 2 5 2011

Subtotal $182.85

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Sales Tax (8.25%)	$15.09
Payments/Credits	$0.00

Received & Approved	Date	TOTAL	$197.94

Past due balances may be turned over to a collection agency and clients are responsible for any collections fees, legal fees, court costs and any other related costs associated with the collection of a past due balance.

TERIS

Invoice

Date	Invoice #
10/18/2011	10215

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106111	due upon rec...	DT	10/18/2011	Patrick McKinley	33236.501
Case Name	Go Daddy		2nd Reference	Fitzpatrick, Ede	

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	Pickup Date: 10/17/11	
504	Standard Litigation Copying - Obstacles Every 12 or More Pages @ $.12/page	60.48T
77	Alpha or Numeric Tabs @ $.25/each	19.25T
9	Custom Divider Tabs @ $.50/each	4.50T

Thank You For Your Business

Sales Tax (8.25%)	$6.95

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Total	$91.18

TERIS

Invoice

Date	Invoice #
10/26/2011	10413

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306,
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106084	due upon rec...	DT	10/26/2011	Patrick McKinley	33236.510
Case Name	Go DADDY		2nd Reference	GD 002511-2607	

Qty	Description	Amount
	··If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
0.5	Pickup Date: 10/12/11 High-Level Tech Time: Create PDFS @ $125/hour	62.50

ok to m

Thank You For Your Business

Sales Tax (8.25%)	$0.00

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Total	$62.50

TERIS

Invoice

Date	Invoice #
10/26/2011	10411

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106037	due upon rec...	DT	10/26/2011	Patrick McKinley	33236.510
Case Name	Go DADDY		2nd Reference	SEE BODY	

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	2nd Reference: Print additional documents from categories	
	Pickup Date: 10/06/11	
629	Native Reconstructed Blowbacks @ $.12/page	75.48T

Thank You For Your Business	Sales Tax (8.25%)	$6.23
The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.	**Total**	$81.71

TERIS

Invoice

Date	Invoice #
10/26/2011	10412

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11108062	due upon rec...	DT	10/26/2011	Patrick McKinley	33236.510

Case Name	Go DADDY	2nd Reference	SEE BODY

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	2nd Reference: Print E-mails, Forwarding Code, go Website	
	Pickup Date: 10/10/11	
1	Mid-Level Tech Time: Pulling docs from list @ $125/hour	125.00T
3,168	Native Reconstructed Blowbacks @ $.10/page	316.80T
36	Custom Divider Tabs @ $.50/each	18.00T
3	3' Regular Binder @ $10/each	30.00T

Thank You For Your Business	Sales Tax (8.25%)	$40.41
The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.	**Total**	$530.21

TERIS

Invoice

Date	Invoice #
10/31/2011	10572

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306·
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106114	due upon rec...	DT	10/31/2011	Patrick McKinley	33236.510
Case Name	Go Daddy		**2nd Reference**	Print List of GO Ranges	

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
760	Pickup Date: 10/17/11 Native Reconstructed Blowbacks @ $.12/page	91.20T

ok to pay

Thank You For Your Business

	Sales Tax (8.25%)	$7.52
The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.	**Total**	$98.72

⬤ TERIS

Invoice

Date	Invoice #
10/31/2011	10630

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106083	due upon rec...	DT	10/31/2011	Patrick McKinley	33236.510

Case Name	Go Daddy	2nd Reference	Docs Rec From Export

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	Pickup Date: 10/12/11	
168	Scanning - Color/Grayscale @ $.25/page	42.00T
168	Image Endorsing (GD 002608) @ $.01/page	1.68T
2	Mid-Level Tech Time: Revised the volumes two time requested by client @ $125/hour	250.00T
6	CD-ROM Duplication @ $10/disk	60.00T

Thank You For Your Business

Sales Tax (8.25%)	$29.18

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Total	$382.86

TERIS

Invoice

Date	Invoice #
10/31/2011	10791

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106134	due upon rec...	DT	10/31/2011	Patrick McKinley	33236.510

Case Name	GoDaddy	2nd Reference	Production

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	Pickup Date: 10-19-11	
	Bates Range: GD002776 - GD002856	
77	Image Endorsing (Bates Numbers and/or Annotations) @ $.01/page	0.77T
77	Conversion of Color Native Files to JPEG @ $.15/page	11.55T
0.15	High-Level Tech Time: Prepare PDFs @ $125/hour	18.75

Thank You For Your Business	Sales Tax (8.25%)	$1.02
The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.	**Total**	$32.09

TERIS

Invoice

Date	Invoice #
10/31/2011	10632

Bill To
Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304-1050 (650) 493-9300

Please Pay
TERIS - Bay Area 268 Lambert Avenue Palo Alto, CA 94306 (650) 213-9922 Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11106109	due upon rec...	DT	10/31/2011	Patrick McKinley	33236.510
Case Name	Go Daddy		2nd Reference	Reg Manager Claim Manager	

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
394	Pickup Date: 10/17/11 Native Reconstructed Blowbacks @ $.12/page	47.28T

Thank You For Your Business

Sales Tax (8.25%)	$3.90

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Total $51.18

TERIS

Invoice

Date	Invoice #
12/16/2011	11796

Bill To

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-9300

Please Pay

TERIS - Bay Area
268 Lambert Avenue
Palo Alto, CA 94306
(650) 213-9922
Tax ID# 45-2810676

Job Number	Terms	Rep	Delivery	Attention	Client Matter
11126013	due upon rec...	DT	12/2/2011	Patrick McKinley	33236.510
Case Name	Go Daddy	2nd Reference		Foam Board Mount	

Qty	Description	Amount
	If payment is made by wire remittance, please direct to: TERIS-Bay Area Chase Bank Account# 902708221 Routing# 325070760 Please reference your TERIS Invoice Number	
	Pickup Date: 12/02/2011	
1	Enlarge & Mount (B&W) @ $6.25/sq.ft. Total Square Feet: 12	75.00T

Thank You For Your Business

Sales Tax (8.25%)	$6.19

The TERIS - Bay Area, LLC customer is ultimately responsible for payment within our terms.

Total | $81.19

Ex. H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD
(PETRONAS),

       Plaintiff,

                              CASE NO. 09-CV-5939PJH

   vs.

GODADDY.COM, INC.,

       Defendant.
_____/

::: CONFIDENTIAL :::

30(b)(6) DEPOSITION OF RONALD HERTZ

DATE: Thursday, October 13, 2011

TIME: 12:05 p.m.

LOCATION: BALLARD SPAHR, LLP
           1 East Washington Street, Suite 2300
           Phoenix, Arizona 85004

REPORTED BY: JANICE HARRINGTON, RPR, CRR, CLR
           AZ Certified Court Reporter No. 50844
           Registered Professional Reporter
           Certified Realtime Reporter
           Certified LiveNote Reporter

           MBreporting

           111 Deerwood Road, Suite 200

           San Ramon, California 94583

```
 1                  ::: APPEARANCES :::

 2


 3   FOR PETROLIAM NASIONAL BERHAD (PETRONAS) PLAINTIFF:

 4           Law Offices of Perry R. Clark
             By: Perry R. Clark, Attorney At Law
 5           825 San Antonio Road
             Palo Alto, California 94303
 6           (650) 248-5817
             perry@perryclarklaw.com
 7


 8   FOR GODADDY.COM, INC., DEFENDANT:

 9           Wilson Sonsini Goodrich & Rosati
             By: Tonia Ouellette Klausner,
10           Attorney At Law
             1301 Avenue of the Americas, 40th Floor
11           New York, New York 10019-6022
             (212) 497-7706
12           tklausner@wsgr.com

13

14

15

16

17

18

19

20

21

22

23

24

25
```

1   ::: INDEX OF EXAMINATIONS :::

2
   EXAMINATION BY: PAGE
3
                 MR. CLARK   5, 14
4
                 MS. KLAUSNER   14
5

6

7

8
                 ::: INDEX OF REQUESTS :::
9
   PAGE   LINE   REQUEST
10

11   None

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1   ::: INDEX OF EXHIBITS :::

2   NUMBER   DESCRIPTION   PAGE

3   30   Document, Bates No. GD-00251-002607   11

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

 1   RONALD HERTZ

 2 being duly sworn by the Certified Shorthand Reporter

 3 to tell the truth, the whole truth, and nothing but

 4 the truth, testified as follows:

 5   EXAMINATION BY MR. CLARK

 6   Q.   Okay. Good afternoon. My name is Perry

 7 Clark. I'm a lawyer for the plaintiff in this case,

 8 Petroliam Nasional Berhad who I will refer to as

 9 Petronas.

10   MS. KLAUSNER: And I'm Tonia Klausner.

11 I'm here on behalf of Go Daddy.

12 BY MR. CLARK:

13   Q.   Okay. Could you please state your name

14 for the record, please?

15   A.   Ronald Hertz.

16   Q.   Okay. And you work for Go Daddy?

17   A.   I do.

18   Q.   What is your current job title?

19   A.   Vice President and Corporate Controller.

20   Q.   How long have you had that title?

21   A.   Approximately two years.

22   Q.   And were you working for Go Daddy before

23 you were Vice President?

24   A.   I was.

25   Q.   And what was your job title then?

1   A.   Corporate Controller.

2   Q.   How long have you worked for Go Daddy?

3   A.   Little over nine years.

4   Q.   All right. So we have a pile of exhibits

5   in front of you. Could you go ahead and take a look

6   at Exhibit 1, please. If you could turn to page 9,

7   there's a numbered paragraph 18 towards the top of

8   that page. Do you see paragraph 18?

9   A.   Yes.

10   Q.   It says, "Go Daddy's business operations

11   and financial information to which Go Daddy refers in

12   its initial disclosure is dated July 15, 2010." Do

13   you see that?

14   A.   Yes.

15   Q.   And do you understand you have been

16   designated as Go Daddy's representative to testify on

17   that topic?

18   A.   Yes.

19   Q.   Okay. So can you tell me I guess in

20   general -- okay. When were you first informed that

21   you might be giving a deposition in this case?

22   A.   Approximately two weeks ago.

23   Q.   Okay. And who was it? Who informed you?

24   A.   Nima Kelly.

25   Q.   Okay. And what have you done to prepare

1   for your deposition?

2   MS. KLAUSNER: And I'll caution the

3   witness not to disclose any conversations you might

4   have had with attorneys.

5   THE WITNESS: I met with counsel and

6   reviewed a couple of documents.

7   BY MR. CLARK:

8   Q.   When did you meet with counsel?

9   A.   With outside counsel yesterday.

10   Q.   Okay. Did you do anything else to

11 prepare for your deposition?

12   A.   I did not.

13   Q.   Okay. You said you reviewed some

14 documents. Did you review all the documents that you

15 reviewed during your meeting with outside counsel?

16   A.   No, I did not.

17   Q.   Okay. You reviewed some documents

18 outside of the time that you met with your counsel,

19 correct?

20   A.   That is correct.

21   Q.   All right. Do you recall what documents

22 you reviewed outside of your meeting with counsel?

23   A.   Yes. I reviewed the Registrar-Registry

24 Agreement with VeriSign.

25   Q.   Any others?

1   A.   To the best of my knowledge, yes.

2   Q.   Do you know if this Registry-Registrar

3   relates in any way to Go Daddy's domain name

4   forwarding service?

5   MS. KLAUSNER: Object to the form.

6   THE WITNESS: Can you explain what you

7   mean by "relates in any way"?

8   BY MR. CLARK:

9   Q.   Does Go Daddy have any obligations

10 arising from the .NET Registry-Registrar that relate

11 to the conduct of its domain name forwarding service?

12   MS. KLAUSNER: Object to the form.

13   THE WITNESS: Can you restate the

14 question please?

15 BY MR. CLARK:

16   Q.   Sure. I'm just getting at, does the .NET

17 Registry-Registrar Agreement govern any of Go Daddy's

18 conduct with respect to providing its domain name

19 forwarding service to Go Daddy's customers?

20   A.   I'm not sure what you mean by governing

21 its conduct.

22   Q.   So can you explain in general what Go

23 Daddy's obligations are under the .NET

24 Registrar-Registry Agreement?

25   A.   My understanding of the agreement is it

```
 1   sets out the guidelines between Go Daddy and VeriSign

 2   in registering .NET domain names.

 3         Q.    Does Go Daddy's domain name forwarding

 4   service relate to the registration of .NET domain

 5   names?

 6         A.    I'm not sure I understand the question.

 7         Q.    Is Go Daddy's domain name forwarding

 8   service part of its activity with respect to

 9   registering .NET domain names?

10         A.    I don't believe the forwarding service

11   relates at all to the registration of the domain

12   name.

13         Q.    Okay.  Just changing gears a little bit,

14   topic 20 relates to an insurance agreement, and you

15   mentioned an E and O insurance agreement.  Is that an

16   agreement made in connection with the Hiscox

17   insurance agency?

18         A.    Hiscox is the insurance provider.

19         Q.    Okay.  Is that agreement still in effect?

20   Or I'm sorry, is that policy still in effect?

21         A.    It is not.

22         Q.    Has Go Daddy made a claim related to this

23   case under any insurance policy other than the Hiscox

24   insurance policy?

25         A.    Not that I'm aware of.
```
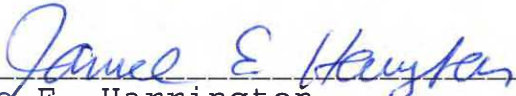
```
 1                        CERTIFICATE

 2

 3              I, Janice E. Harrington, Certified Court

 4    Reporter for the State of Arizona, certify:

 5              That the foregoing deposition was taken

 6    by me; that I am authorized to administer an oath;

 7    that the witness, before testifying, was duly sworn

 8    by me to testify to the whole truth; that the

 9    questions propounded by counsel and the answers of

10    the witness were taken down by me in shorthand and

11    thereafter reduced to print by computer-aided

12    transcription under my direction; that deposition

13    review and signature was requested; that the

14    foregoing pages are a full, true, and accurate

15    transcript of all proceedings and testimony had upon

16    the taking of said deposition, all to the best of my

17    skill and ability.

18              I FURTHER CERTIFY that I am in no way

19    related to nor employed by any of the parties hereto

20    nor am I in any way interested in the outcome hereof.

21              DATED this 25th day of October, 2011

22

23    _____
      Janice E. Harrington
24    Certified Court Reporter No. 50844
      For the State of Arizona
25

                        APP009.1
```