

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 POWERTECH TECHNOLOGY, INC.,

No. C 11-6121 CW

5 Plaintiff,

ORDER ON CROSS
MOTIONS FOR
SUMMARY JUDGMENT
(Docket Nos.
352-2, 407)

6 v.

7 TESSERA, INC.,

8 Defendant.

9 _____/
10 AND ALL RELATED CLAIMS AND
11 COUNTERCLAIMS
11 _____/

12 Plaintiff Powertech Technology, Inc. (PTI) sued Defendant
13 Tessera, Inc. for breach of contract and other contract-related
14 claims. Tessera countersued, asserting similar claims against PTI
15 and Counterclaim Defendant Macrotech Technology Inc. (MTI).
16 Before the Court are the parties' cross motions for summary
17 judgment. Both sides urge the Court to grant summary judgment on
18 their affirmative claims as well as their opponent's claims. The
19 Court held oral argument on December 12, 2013. Having considered
20 the papers and arguments of counsel, the Court GRANTS Tessera's
21 motion and GRANTS PTI's motion in part.

22 BACKGROUND

23 I. TCC License Agreement

24 On October 20, 2003, PTI and Tessera entered into the Tessera
25 Compliant Chip License Agreement (TCC License). Docket No. 1,
26 Appendix A. The TCC License Agreement allows PTI to use Tessera's
27 patents to assemble integrated circuit packages and use or sell
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1 them world-wide. TCC License §§ I.A., II.A. In return, PTI must
2 make certain royalty payments to Tessera. See TCC License § III.

3 The TCC License contains a "Governing Law" provision, which
4 provides that the contract is governed by California law, and "any
5 disputes, controversies, claims or difference which may arise
6 from, under, out of or in connection with this Agreement" shall be
7 adjudicated in the state or federal courts of California. Id.
8 § XIV.A. The same provision states that notwithstanding any
9 provision herein, after the sixty-day notice of termination and
10 cure period set forth in Section VIII.B, "either party may bring
11 an action in the U.S. International Trade Commission (ITC)." Id.

12 The scope of PTI's rights as a licensee are summarized in
13 Section II of the License. See id. § II. This section contains
14 an "Exclusion from License" (EFL) provision, which states that the
15 licensee is "licensed only for TCC Licensed Products for which it
16 pays royalties hereunder." Id. § II.D. Tessera may, however,
17 notify the licensee that it believes a product made, used, sold,
18 imported, or offered for sale by the licensee is a Licensed
19 Product under the TCC License. Id. If the parties cannot agree
20 whether the licensee's product is a Licensed Product, the parties
21 may commence litigation after a sixty-day period. Id.

22 The TCC License also contains an "Indemnification Clause,"
23 which provides that the licensee "agrees to defend, indemnify and
24 hold Tessera harmless from and against any and all damages,
25 liabilities, costs and expenses (including reasonable attorney's
26 fees and expenses) arising out of or related to Licensee's use of
27 Tessera Patents." The Indemnification Clause does not apply to
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1 any "obligation or expense of defending the validity of any
2 Tessera patent."

3 II. ITC Investigation

4 In December 2007, Tessera initiated ITC Investigation No.
5 337-TA-630 (the 630 Investigation), accusing PSC, ProMos, Nanya,
6 Elpida, and fourteen other companies of infringing a number of
7 Tessera's patents, including the 5,663,106 patent (the '106
8 patent), through the importation and sale of wBGA and uBGA
9 products. Mills Decl., Ex. Q, 630 Investigation Compl. PTI was
10 not named as a respondent in the ITC action. See id. The 630
11 Investigation Complaint explicitly excluded any properly-licensed
12 products manufactured by respondents. Id. at ¶ 9.

13 On December 28, 2007, Elpida sent PTI a letter about the 630
14 Investigation. Mills Decl., Ex. U. Elpida attached the complaint
15 and asked PTI for Tessera licensing information as well as
16 indemnification from the suit pursuant to their manufacturing
17 agreement. Id. On January 2, 2008, PTI responded to Elpida,
18 representing that PTI had a license with Tessera for all products
19 packaged for Elpida. Mills Decl., Ex. T. PTI further stated that
20 it would "legally honor [its] indemnity obligations and defend
21 Elpida." Id.

22 In May 2008, PTI and Elpida entered into a common interest
23 agreement to facilitate discussions about the 630 Investigation.
24 See Mills Decl., Ex. K, Lin Depo. at 56:1-4, 60:18-25. PTI and
25 Elpida discussed "whether Elpida was liable to Tessera based on
26 any products supplied by PTI." Lin Depo. at 56:1-4, 57:7-58:13,
27 60:18-61:25. PTI and Elpida remained in close communication
28 during the 630 Investigation, with PTI sending Elpida evidence of

1 its royalty payments to Tessera. See Mills Decl., Exs. Z, AA, AB,
2 AC, AD, AE, AF.

3 In June and November 2008, PTI made two catch-up royalty
4 payments to Tessera. Mills Decl., Exs. AG, AI. PTI stated in an
5 email that it had discovered through an internal audit that it was
6 delinquent on royalty payments dating back to 2005. See id.

7 In August 2009, the Administrative Law Judge (ALJ) in the 630
8 Investigation issued an initial determination. The ALJ held that
9 Tessera failed to demonstrate that the accused wBGA and uBGA
10 products infringed the '106 patent. Tessera, Inc. v. Int'l Trade
11 Comm'n, 646 F.3d 1357, 1363 (Fed. Cir. 2011) cert. denied, 132 S.
12 Ct. 2707 (2012) (summarizing the ALJ's conclusions). The ALJ
13 additionally found that "Tessera's patent rights are exhausted as
14 to those accused products purchased from Tessera's licensees,"
15 precluding any liability based on those products. Id. On January
16 4, 2010, the ITC issued its final determination in the 630
17 Investigation, reversing the ALJ's finding that uBGA products did
18 not infringe, but affirming the ALJ's finding of patent
19 exhaustion, and affirming the ALJ's finding that wBGA products did
20 not infringe. Id.

21 On May 23, 2011, the Federal Circuit affirmed in part the
22 ITC's final determination in the 630 Investigation and reversed it
23 in part. Id. The Federal Circuit affirmed the ITC's finding that
24 the wBGA products did not infringe the '106 patent. Id. at
25 1366-67. The Federal Circuit also upheld the finding of patent
26 exhaustion with respect to the infringement accusations against
27 the uBGA products, stating that because "Tessera's licensees were
28 authorized to sell the accused products" at the time of sale

1 without reservation, Tessera could not subsequently assert its
2 patent rights against the licensees' customers. Id. at 1369-71.
3 In so holding, the court rejected Tessera's argument that its
4 licensees' sales to their customers were initially unauthorized
5 until the time that the licensee remitted the related royalty
6 payment to Tessera which, under the licensing agreements' payment
7 schedules, may not have happened for months after the products
8 were sold. Id. at 1370. On August 30, 2011, the Federal Circuit
9 denied Tessera's petition for rehearing en banc.

10 III. PTI Shifts Elpida Business to MTI and Sends Letter
11 Terminating TCC License

12 In May 2011, Elpida wrote a letter to PTI suggesting using
13 "MPTI(?) to avoid a royalty." Mills Decl., Ex. AK at 2. MTI is
14 PTI's wholly-owned subsidiary. PTI responded saying it would
15 "build wBGA in MTI." Id. at 1. Over the next several months, PTI
16 and Elpida continued to communicate about transferring Elpida
17 business to MTI. See, e.g., Mills Decl., Exs. AM, AK. In
18 September 2011, MTI voted not to be bound by the TCC License. See
19 Guy Decl., Ex. 10. On September 22, 2011, Elpida began placing
20 orders directly with MTI. Mills Decl., Ex. V.

21 On October 6, 2011, PTI sent a letter notifying Tessera that
22 PTI considered the 630 Investigation a breach of the TCC License
23 Governing Law provision. Guy Decl., Ex. 80. PTI also informed
24 Tessera that, pursuant to the terms of the TCC License, it
25 intended to terminate the contract unless Tessera "cured" the
26 breach within sixty days by reimbursing PTI for all royalties paid
27 since December 7, 2007. Id. Because Tessera did not do so, PTI
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1 considered the TCC License terminated as of June 30, 2012.

2 See id.

3 IV. PTI 1

4 On March 5, 2010, several months after the ITC issued its
5 final determination in the 630 Investigation, PTI filed an action
6 for declaratory relief in this Court. See Powertech Technology,
7 Inc. v. Tessera Inc., C 10-00945-CW (N.D. Cal.) (PTI 1), Docket
8 No. 1. In that case, PTI sought declarations of non-infringement
9 and invalidity of the '106 patent and maintained that it faced an
10 imminent threat of injury because Tessera had accused PTI's
11 customers of infringement based on PTI-packaged products. On
12 April 1, 2010, Tessera moved to dismiss the case for lack of
13 subject matter jurisdiction because "PTI is a licensee in good
14 standing and it and its customers therefore enjoy protection
15 against any suit accusing its licensed products of infringement of
16 the '106 patent or any other licensed patent." PTI 1, Docket No.
17 14 at 6. In June 2010, this Court dismissed the action for lack
18 of subject matter jurisdiction, finding that there was no Article
19 III case or controversy between the parties because Tessera had
20 explicitly excluded licensed products from its enforcement
21 actions. Powertech Technology, Inc. v. Tessera, Inc., 2010 U.S.
22 Dist. Lexis 53621, at *7-8 (N.D. Cal.). Further, the Court found
23 MedImmune distinguishable because, under the TCC License, PTI's
24 obligation to pay royalties was not based on a finding of
25 infringement. Id. at *4. The Federal Circuit reversed, holding
26 that PTI need not be in breach of the TCC License in order to
27 bring a declaratory judgment to define the terms of the contract.

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1 Powertech Tech. Inc. v. Tessera, Inc., 660 F.3d 1301, 1308 (Fed.
2 Cir. 2011).

3 On March 31, 2013, the Court granted Tessera's motion for
4 summary judgment and dismissed the case for lack of subject matter
5 jurisdiction. PTI 1, Docket No. 233 at 45. The Court based its
6 decision on Tessera's unconditional covenant not to sue PTI for
7 infringement of the '106 patent, which Tessera filed in October
8 2012. Id. Because of the close relationship between that case
9 and the instant case, however, the Court delayed entry of judgment
10 until judgment could be entered in both cases simultaneously. Id.
11 at 47.

12 V. PTI 2

13 On December 6, 2011, PTI brought the present suit against
14 Tessera. Docket No. 1. In the original complaint, PTI asserted
15 claims for: (1) declaratory judgment that PTI may terminate the
16 TCC License; (2) breach of contract; and (3) breach of the implied
17 covenant of good faith and fair dealing. On October 11, 2012,
18 with leave from the Court, PTI filed the operative Fourth Amended
19 Complaint, adding: (4) fraud and deceit; (5) declaratory judgment
20 for patent misuse; (6) declaratory judgment interpreting the TCC
21 License as requiring patent infringement before royalties are due.
22 See Docket No. 176 ¶¶ 108-14.

23 Tessera asserted counterclaims for (1) breach of contract
24 against PTI, (2) breach of the implied covenant of good faith and
25 fair dealing against PTI, (3) fraud and deceit against PTI,
26 (4) fraudulent transfer against PTI, (5) negligent
27 misrepresentation against PTI, (6) intentional interference with
28 prospective economic advantage against PTI and MTI, (7) negligent

1 interference with prospective economic advantage against PTI and
2 MTI, (8) declaratory judgment of indemnification against PTI,
3 (9) declaratory judgment regarding termination of the contract
4 against PTI, (10) inducing breach of contract against MTI,
5 (11) constructive trust against MTI. See Docket No. 253-1.

6 LEGAL STANDARD

7 Summary judgment is appropriate only where the moving party
8 demonstrates there is no genuine dispute as to any material fact
9 such that the moving party is entitled to judgment as a matter of
10 law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S.
11 317, 323 (1986). Material facts are those that might affect the
12 outcome of the case, as defined by the framework of the underlying
13 substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
14 248 (1986). A dispute is genuine if the evidence is such that a
15 reasonable jury could return a verdict for either party. Id.

16 The moving party bears the initial burden of informing the
17 district court of the basis for its motion and identifying those
18 portions of the pleadings, discovery, and affidavits that
19 demonstrate the absence of a disputed issue of material fact.
20 Celotex, 477 U.S. at 323. In opposing the motion, the non-moving
21 party may not rely merely on allegations or denials of its
22 pleadings, but must set forth "specific facts showing that there
23 is a genuine issue for trial." Anderson, 477 U.S. at 248 (citing
24 Fed. R. Civ. P. 56(e)).

25 The court must construe the evidence in the light most
26 favorable to the non-moving party, making all reasonable
27 inferences that can be drawn. Matsushita Elec. Indus. Co., Ltd.
28 v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Intel Corp. v.

1 Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir.
2 1991); Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1289 (9th
3 Cir. 1987).

4 DISCUSSION

5 The parties' cross-motions for summary judgment contain many
6 overlapping arguments targeting both their own claims and their
7 opponent's claims. The Court addresses the parties' motions
8 according to the claims in each party's complaint in turn.

9 I. PTI's Complaint

10 A. PTI's Claim for Declaratory Judgment that PTI Has the
11 Right to Terminate the Contract

12 PTI brings a claim for declaratory judgment stating that PTI
13 had a contractual right to terminate the TCC License as of
14 December 7, 2011, when Tessera brought the 630 Investigation, or
15 alternatively June 30, 2012, after Tessera took action against
16 PTI-packaged products in the 630 Investigation. Both PTI and
17 Tessera seek summary judgment on this claim.

18 The TCC License has an express termination clause. If a
19 contract has a termination clause, the clause controls and a party
20 to the contract may only terminate in accordance with the terms
21 specified. See Kuffel v. Seaside Oil Co., 11 Cal. App. 3d 354,
22 368 (1970); Mad River Lumber Sales, Inc. v. Willburn, 205 Cal.
23 App. 2d 321, 324 (1962). The termination clause reads:

24 Termination for Breach. Either party may terminate this
25 Agreement due to the other party's breach of this Agreement,
26 such as failure to perform its duties, obligations, or
27 responsibilities herein (including, without limitation,
28 failure to pay royalties and provide reports as set forth
herein). The parties agree that such breach will cause
substantial damages to the party not in breach. Therefore,
the parties agree to work together to mitigate the effect of

1 any such breach; however, the non-breaching party may
2 terminate this Agreement if such breach is not cured or
sufficiently mitigated (to the non-breaching party's
satisfaction) within sixty (60) days of notice thereof.

3 TCC License § VIII.B.

4 PTI's theory is that Tessera breached the TCC License's
5 Governing Law provision by bringing the 630 Investigation, giving
6 PTI the right to terminate. As noted previously, the Governing
7 Law provision requires in relevant part:

8 . . . Both parties shall use reasonable efforts to resolve by
9 mutual agreement any disputes, controversies, claims or
differences which may arise from, under, out of or in
10 connection with this Agreement . . . Notwithstanding any
provision herein, after the sixty (60) day cure period set
11 forth in Paragraph VIII.B and notice of termination of this
Agreement by one of the parties, either party may bring an
12 action in the U.S. International Trade Commission.

13 TCC License § XIV.A. According to the plain language of this
14 clause, before either party brings an ITC action regarding a
15 dispute or controversy arising from, under, out of or in
16 connection with the Agreement, it must first terminate the
17 contract.

18 PTI argues that although Tessera did not explicitly name PTI
19 as a respondent in the 630 Investigation, Tessera sought to
20 exclude PTI-packaged products by targeting PTI's customers. PTI
21 presents two pieces of evidence in support of its contention.
22 First, PTI cites Tessera's briefing in the 630 Investigation,
23 where Tessera requested the ITC grant a General Exclusion Order
24 (GEO) against all infringing and unlicensed articles, regardless
25 of source. See generally Guy Decl., Ex. 11. PTI argues that if
26 it had been granted, the GEO would have affected PTI-packaged
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1 products. Second, PTI submits that Tessera experts opined on
2 whether PTI-packaged products infringed Tessera's patents.¹

3 But even if PTI is correct that Tessera breached by bringing
4 the 630 Investigation, that in and of itself does not give PTI the
5 right to terminate the contract. Only a non-breaching party may
6 terminate the TCC License. Although the first sentence of the
7 termination clause is broad -- "Either party may terminate this
8 Agreement due to the other party's breach" -- the language of the
9 clause as a whole makes clear that only a non-breaching party may
10 terminate. See id.; Zalkind v. Ceradyne, Inc., 194 Cal. App. 4th
11 1010, 1027 (2011) (contracts must be interpreted in light of the
12 entirety). The termination clause refers to a "breaching party"
13 and a "non-breaching party" in every sentence after the first:
14 "The parties agree that such breach will cause substantial damages
15 to the party not in breach . . . the non-breaching party may
16 terminate this Agreement if such breach is not cured . . . to the
17 non-breaching party's satisfaction []." Id. Without reading the
18 first sentence out of context, the clause requires the party
19 seeking to terminate for the other party's purported breach to be
20 substantially in compliance with its own obligations first.

21 _____
22 ¹ The Federal Circuit, considering the same two points,
23 remarked in a footnote in the related case PTI 1:

24 "[W]e have no doubt that PTI's customers and products were
25 specifically targeted in [the 630 Investigation.] For example,
26 witnesses for Elpida testified that the accused products in the
27 ITC . . . were licensed from several licensees, including PTI.
28 Indeed, Tessera's infringement expert in the ITC action focused
part of his analysis on an Elpida wBGA chip that was clearly
packaged by PTI and identified with a PTI model number."

Powertech Tech., Inc. v. Tessera Inc., 660 F.3d at 1307.

1 It is undisputed that PTI was not a "non-breaching party"
2 when Tessera purportedly breached, when PTI attempted to
3 terminate, or even now. PTI was not in compliance with the TCC
4 License terms at the time that Tessera brought the 630
5 Investigation. PTI admits that it had been delinquent on royalty
6 payments, making millions of dollars of catch-up payments a few
7 months after the 630 Investigation began. Mills Decl., Exs. AG,
8 AI. Although the catch-up payments put PTI current with its
9 royalty payments, PTI began withholding royalties again. When PTI
10 sent its notice of termination of the TCC License on October 6,
11 2011, and ultimately terminated in June 2012, PTI also was not in
12 compliance with its royalty obligations. PTI does not deny that
13 it stopped paying royalties for some licensed uBGA and wBGA
14 products in 2010. See Mills Decl., Ex. BG. Because PTI ceased
15 paying royalties altogether in 2012, PTI does not have the right
16 to terminate even now.

17 PTI argues that it substantially complied with the TCC
18 License because it paid "millions of dollars to Tessera in
19 royalties" between 2008 and 2012. See Docket No. 352-2, at 15.
20 "What constitutes substantial performance is a question of fact,
21 but it is essential that there be no wilful departure from the
22 terms of the contract, and that the defects be such as may be
23 easily remedied or compensated, so that the promisee may get
24 practically what the contract calls for." Posner v. Grunwald-
25 Marx, Inc., 56 Cal. 2d 169, 187 (1961). The fact that PTI paid
26 millions of dollars in royalties does not take away from the fact
27 that it owed Tessera many millions more. PTI's president, Ping
28 Chung Liao, admitted he intentionally withheld a substantial

1 percentage of royalty payments. See Mills Decl., Ex. E, Liao
2 Depo. 170:15-21, 171:1-23. As a "willful departure from the terms
3 of the contract," this withholding of royalty payments cannot
4 constitute substantial performance. Posner, 56 Cal. 2d at 187.

5 Because it is undisputed that PTI was not a "non-breaching
6 party" under the terms of the TCC License, PTI cannot prove that
7 it had a right to terminate the TCC License. Accordingly, the
8 Court DENIES PTI's motion for summary judgment and GRANTS
9 Tessera's motion for summary judgment on this claim.

10 B. Breach of Contract

11 PTI also brings a breach of contract claim against Tessera,
12 alleging that Tessera breached the TCC License by bringing the 630
13 Investigation. Both PTI and Tessera move for summary judgment on
14 this claim. The "essential elements" of a breach of contract
15 claim are "(1) the contract, (2) plaintiff's performance or excuse
16 for nonperformance, (3) defendant's breach, and (4) the resulting
17 damages to plaintiff." Reichert v. General Ins. Co., 68 Cal. 2d
18 822, 830 (1968). Having found that PTI cannot prove that it
19 performed its obligations under the TCC License, which is also an
20 essential element of PTI's breach of contract claim, the Court
21 could end its inquiry there and enter summary judgment in favor of
22 Tessera. Nevertheless, it is important to note that PTI's breach
23 of contract claim fails for the additional, independent reason
24 that PTI has not provided any evidence that it suffered damages as
25 a result of Tessera's alleged breach. CDF Firefighters v.
26 Maldonado, 158 Cal. App. 4th 1226, 1239 (2008).

27 PTI does not point to any expenses that it was forced to pay
28 due to Tessera bringing the 630 Investigation, such as lost sales

1 or the costs of indemnifying Elpida. Instead, PTI presents a
2 somewhat indirect theory that, had PTI known about Tessera's
3 breach, PTI would have terminated the contract and ceased paying
4 royalties immediately. PTI's claimed damages are the unnecessary
5 royalty payments made after Tessera's breach. When asked at oral
6 argument, PTI's counsel could identify no other theory of damages.

7 The undisputed evidence negates PTI's assertion that it would
8 have terminated the TCC License immediately had it known about
9 Tessera's breach. PTI knew that its products were targeted in the
10 630 Investigation much earlier than October 6, 2011, but did not
11 try to terminate the TCC License until then. In December 2007,
12 Elpida sent PTI a letter informing PTI that PTI-packaged products
13 were at issue in the 630 Investigation and attaching the
14 complaint. PTI knew that its indemnity obligation applied only to
15 products that PTI packaged. Mills Decl., Ex. F, Liao Depo. at
16 224:15-225:2, 228:16-229:8. On April 22, 2010, about eighteen
17 months before PTI purported to terminate, PTI's chairman and CEO,
18 D.K. Tsai, submitted a declaration in PTI 1 stating that he knew
19 that PTI-packaged products were implicated by the 630
20 Investigation:

21 [T]he assertion of the claims of the '106 patent in the 630
22 Investigation and the Texas action implicates PTI because PTI
23 performs the chip encapsulation step in the manufacturing
24 process for some of the companies named as alleged infringers
25 of the '106 patent.

24 . . .

25 Hundreds of millions of units of PTI products per year are
26 potentially at stake in the 630 Investigation and the Texas
27 Action.

27 . . .

1 Sales of accused products to Elpida, PSC, ProMos and Kingston
2 represent over 80% of PTI's annual volume. Upon information
3 and belief, a majority of these products are ultimately
4 destined for the United States market . . . and thus could be
5 subject to exclusion in the 630 Investigation.

6 Mills Decl., Ex. BV ¶¶ 3, 6. Despite demonstrating knowledge of
7 Tessera's purported breach, PTI did nothing until much later. PTI
8 therefore cannot show that Tessera's purported breach caused it to
9 suffer additional royalty payments. PTI's motion on its breach of
10 contract claim is DENIED and Tessera's motion on the same claim is
11 GRANTED.

12 C. Fraud

13 PTI has two main bases of its fraud allegations. The first
14 is that Tessera falsely reassured PTI that it was not targeting
15 PTI-packaged products in the 630 Investigation. Tessera attacks
16 this claim as time-barred. Under California law, fraud has a
17 three year statute of limitations. Cal. Civ. Code § 338(d). The
18 statute of limitations begins to run from the date a party had
19 actual or constructive notice of the facts constituting the
20 alleged fraud. Robuck v. Dean Witter & Co., 649 F.2d 641, 644
21 (9th Cir. 1980). Constructive notice occurs when a reasonably
22 prudent person would be suspicious of fraud. Id. Because PTI
23 first filed its fraud claim on June 1, 2012, the cutoff date for
24 notice of any fraud claim would be June 1, 2009. In other words,
25 if PTI received actual or constructive notice of the basis of any
26 of its fraud claims before June 1, 2009, then PTI's claim is time-
27 barred.

28 Tessera argues that PTI knew or had constructive notice of
the facts underlying its fraud claim by at least July 2008. In
December 2007, Elpida sent PTI a letter informing PTI that PTI-

1 packaged products were at issue in the 630 Investigation and
2 attaching the complaint. PTI acknowledged the letter by promising
3 to honor its indemnity obligations to Elpida. This letter and
4 PTI's response indicated that PTI was on notice that PTI-packaged
5 products might be implicated, giving PTI every reason to track the
6 630 Investigation. The fact that Elpida and PTI kept in
7 communication about the 630 Investigation demonstrates that PTI
8 did so.

9 PTI counters that Tessera obscured its position by reassuring
10 PTI that the 630 Investigation only targeted "unlicensed
11 subcontractors." Guy Decl., Ex. 4. But PTI cannot in good faith
12 argue that PTI relied upon Tessera's statement when PTI admitted
13 that it had been secretly and willfully withholding royalties
14 since 2005, and later made catch-up payments to Tessera to make up
15 the difference. PTI also argues it did not know Tessera was
16 targeting PTI because Tessera kept many 630 Investigation files
17 under seal. By July 2008, however, parties to the 630
18 Investigation had filed several public documents discussing
19 Tessera's previous position that if no royalty had been paid, a
20 product was not licensed and might be infringing. Mills Decl.,
21 Ex. BX and attachments (several public 630 Investigation filings,
22 including an Elpida filing stating that "Tessera, however, also
23 contends that no products are licensed until the royalties are
24 paid").

25 In sum, the undisputed facts show that PTI received at least
26 constructive notice by at least July 2008. Despite Tessera's
27 reassurances that PTI was not targeted in the 630 Investigation, a
28 reasonable person in PTI's position would have been put on notice

1 by Elpida's letter and the public filings and would have been
2 suspicious that Tessera's reassurances were false. This
3 constitutes evidence of constructive notice of the bulk of PTI's
4 fraud claims. See Docket No. 176 ¶ 109 (fraud allegations a., b.,
5 c., and e. centered around Tessera representations that PTI-
6 packaged products were not at issue in the 630 Investigation).
7 PTI's allegations that it received no actual notice, i.e., it did
8 not actually discover Tessera's 630 Investigation arguments until
9 discovery in the present case, are irrelevant.

10 PTI's second basis for its fraud claim is that Tessera
11 misrepresented that PTI received a "somewhat lower" royalty rate
12 than other DRAM manufactures. Tessera argues that this fraud
13 claim is untenable because it is a "generalized, vague and
14 unspecific assertion[], constituting mere 'puffery' upon which a
15 reasonable consumer could not rely." Glen Holly Entm't, Inc. v.
16 Tektronix Inc., 343 F.3d 1000, 1015 (9th Cir. 2003). PTI does not
17 respond directly to this point at all, focusing on bolstering the
18 specificity of the facts of its fraud claim, when Tessera has
19 actually attacked the specificity of Tessera's statement itself.

20 The Court need not decide whether the "somewhat lower"
21 statement is unactionable as a matter of law, however, because PTI
22 failed to produce any evidence that it suffered legally cognizable
23 damages in relying on the "somewhat lower" royalty rate statement.
24 Fraud is only actionable when the plaintiff demonstrates that the
25 defendant's misrepresentation put the plaintiff in a different or
26 worse position. Conrad v. Bank of America, 45 Cal. App. 4th 133,
27 160 (1996). PTI's counsel confirmed at oral argument that the
28 statement was made after the contract was already in effect. D.K.

1 Tsai, Chairman and CEO of PTI, stated that PTI believed the
2 statement and "continued paying royalties" to Tessera.
3 Supplemental Guy Decl., Ex. 107, Tsai Decl. ¶ 9. This does not
4 constitute a legally cognizable theory of damages because
5 Tessera's alleged statement, even if misleading, did not change
6 PTI's duty to pay royalties under the TCC License. Cf. Reyes v.
7 Wells Fargo Bank, N.A., 2011 WL 30759, at *1-2 (N.D. Cal.). PTI
8 does not -- and cannot -- argue that the statement, which if made
9 was made after the contract was signed, altered its apparent
10 assent to be bound by the TCC License. Wildman v. Pac. Coast
11 Indep. Brokerage, Inc., 16 F. App'x 741, 743 (9th Cir. 2001)
12 ("plaintiffs must show their apparent assent to the contracts
13 . . . is negated by fraud"). Upon discovering the royalty rate
14 disparity, PTI would have no justification for terminating the TCC
15 License. See, generally, TCC License (no terms or conditions
16 relying on the lack of a royalty rate disparity). PTI thus cannot
17 claim that Tessera's allegedly fraudulent statement caused it to
18 overpay royalty payments that it otherwise would have avoided.

19 Because the first basis of PTI's fraud claim is time-barred,
20 and its second basis fails substantively, the Court GRANTS
21 Tessera's motion for summary judgment on PTI's fraud claim.

22 D. Patent Misuse and Declaratory Judgment that Royalty
23 Obligations are Limited to TCC Licensed Products that
24 Infringe an Unexpired, Licensed Patent

25 PTI's fifth and sixth claims essentially seek a declaration
26 that Tessera's use of the TCC License to require PTI to pay
27 royalties on TCC Licensed Products until the expiration of the
28 last licensed patent is patent misuse and that PTI is only obliged

1 to continue paying for Licensed Products that infringe a currently
2 effective patent. On March 31, 2013, the Court granted summary
3 judgment in favor of Tessera on those same issues in PTI 1. See
4 PTI 1, Docket No. 233.

5 In its decision, this Court reasoned, "Courts have approved
6 of contract provisions such as these when an agreement was entered
7 into voluntarily, and PTI has offered no evidence that it was
8 coerced into entering the license agreements or that Tessera had
9 refused to enter into an agreement with it unless it agreed to pay
10 royalties on products that did not practice the patented
11 technology." See id. (citing Beckman Instruments Inc. v.
12 Technical Dev. Corp., 433 F.2d 55, 61 (7th Cir. 1970)). "If
13 convenience of the parties rather than patent power dictates the
14 total-sales royalty provision, there is no misuse of the patents."
15 Zenith Radio Corp v. Hazeltine Research, 395 U.S. 100, 138 (1969).
16 Because this case involves the same parties' use of the same TCC
17 License, the same reasoning applies here. The Court finds no
18 reason to depart from its ruling in PTI 1. PTI has presented no
19 new legal authority or evidence indicating that it entered into
20 the TCC License because of some coercive behavior on Tessera's
21 part. See Docket No. 413-3 at 19; Mills Decl., Ex. EL.
22 Accordingly, Tessera's summary judgment motion on these causes of
23 action is GRANTED.

24 II. Tessera's Claims

25 A. Breach of Contract

26 With respect to its first counterclaim, Tessera argues that
27 PTI breached the TCC License by (1) failing to pay royalties on
28 products covered by the contract, and (2) purporting to terminate

1 the contract. Both parties move for summary judgment on Tessera's
2 breach of contract claims.

3 As discussed previously, a breach of contract claim requires
4 the plaintiff to prove "(1) the contract, (2) plaintiff's
5 performance or excuse for nonperformance, (3) defendant's breach,
6 and (4) the resulting damages to plaintiff." Reichert, 68 Cal. 2d
7 at 830.

8 Regarding the first ground for Tessera's breach of contract
9 claim, beginning in 2010 PTI stopped paying royalties for certain
10 wBGA and uBGA products. See Mills Decl., Ex. BG. Tessera's
11 position is that PTI must pay for any products described as
12 "Licensed Products" under the TCC License Definitions for the
13 duration of the contract. TCC License § I.A. Tessera further
14 contends that products are authorized by the contract before
15 royalties are paid by the grant clause, which states: "Tessera
16 hereby grants Licensee a world-wide, non-exclusive, non-
17 transferable, non-sublicensable, limited license to the Tessera
18 Patents to assemble ICs into TCC Licensed Products and use or sell
19 such License Products." TCC License § II.A.

20 PTI disagrees, arguing that the EFL provision mandates that,
21 as the licensee, it can choose which products to license by making
22 royalty payments for them. The EFL provision states: "Licensee is
23 licensed only for TCC Licensed Products for which it pays
24 royalties hereunder." Id. § II.D. PTI contends the EFL provision
25 means that the licensee can unilaterally decide which products to
26 license by paying a royalty payment. As the licensee, PTI can
27 decide unilaterally to stop licensing a product simply by not
28 making any more royalty payments. See Docket No. 352-2 at 17.

1 The Federal Circuit expressly rejected this interpretation of
2 the EFL provision in its decision on the 630 Investigation.
3 Considering the same license agreement between the same parties,
4 the Federal Circuit rejected an argument that sales are only
5 authorized once royalty payments have been made. Tessera, 646
6 F.3d at 1370. The TCC License's grant clause authorizes licensed
7 products to be sold even before royalty payments are made on a
8 periodic basis. Id. That some licensees fall behind in their
9 payments "does not convert a once authorized sale into a non-
10 authorized sale." Id. Holding otherwise would lead to an absurd
11 result -- one would never be able to determine whether a
12 particular product was authorized or not, clouding each product
13 sale with uncertainty. See id. The Court will not interpret
14 contract clauses in a way that would result in an "absurdity."
15 Wright v. Coberly-W. Co., 250 Cal. App. 2d 31, 36 (1967); Cal.
16 Civ. Code § 1638.

17 Aside from urging the Court to adopt its view of the plain
18 meaning of the EFL provision, PTI also argues that the Court
19 should hold Tessera to the arguments it made before the ITC in the
20 630 Investigation. Tessera's argument was that products are not
21 licensed until they are paid for. Tessera can no longer take this
22 position because it is inconsistent with the Federal Circuit
23 decision. The doctrine of judicial estoppel is inapplicable
24 against Tessera here. PTI cites Bailey v. Outdoor Media Grp., 155
25 Cal. App. 4th 778, 790 (2007), which is inapposite because it
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1 refers to equitable estoppel, not judicial estoppel.² Judicial
2 estoppel prevents a party, who assumed a certain position in a
3 legal proceeding and prevailed, from later assuming a
4 contradictory position in a later proceeding just because its
5 interests have changed. New Hampshire v. Maine, 532 U.S. 742, 749
6 (2001).³ Although the doctrine is not strictly formulaic, several
7 factors can inform a court's decision to invoke judicial estoppel:
8 (1) whether the party's later position is "clearly inconsistent"
9 with its earlier position, (2) whether the party succeeded in
10 persuading the court to accept the party's earlier position such
11 that there would be a danger of inconsistent results, and (3)
12 whether the party seeking to assert the inconsistent position
13 would derive an unfair advantage or impose an unfair detriment on
14 the opposing party if not estopped. Id. at 750-51. Because
15 Tessera did not succeed in persuading the ITC or the Federal

16 ² Equitable estoppel focuses on the relationship between the
17 parties and requires the elements of privity, reliance, and
18 prejudice. Swahn Grp., Inc. v. Segal, 183 Cal. App. 4th 831, 841
19 (2010). Judicial estoppel is focused on the relationship between
20 the litigant and the judicial system and does not require the
21 above elements. Id.

22 PTI has not explained why equitable estoppel is appropriate
23 here and how the elements are satisfied. The elements are "(1) a
24 representation or concealment of material facts (2) made with
25 knowledge, actual or virtual, of the facts, (3) to a party
26 ignorant, actually and permissibly, of the truth, (4) with the
27 intent, actual or virtual, that the latter act upon it, and
28 (5) the party must have been induced to act upon it." Bailey, 155
Cal. App. 4th at 790.

³ Federal law governs judicial estoppel in federal court,
even in diversity actions, because the forum court has the
greatest interest in protecting itself from manipulation.
Rissetto v. Plumbers & Steamfitters Local 343, 94 F.3d 597, 603
(9th Cir. 1996).

1 Circuit of its argument that products are not licensed until they
2 are paid for under the EFL provision, and because Tessera will
3 gain no unfair advantage in taking its current position, the Court
4 will not invoke the judicial estoppel doctrine against Tessera.

5 The second ground for Tessera's breach of contract claim
6 concerns PTI's attempt to terminate the TCC License because
7 Tessera brought the 630 Investigation. As already discussed in
8 regards to PTI's composite breach of contract claim, PTI had no
9 right to terminate the contract because PTI itself was in breach.
10 Accordingly, PTI's attempt to terminate the contract and cease
11 paying royalties in June 2012 was a breach of the TCC License.

12 The Court therefore DENIES PTI's motion and GRANTS Tessera's
13 motion for summary judgment on Tessera's breach of contract claim,
14 and holds that PTI breached both by failing to pay royalties and
15 attempting to terminate the contract without good cause. As
16 Tessera acknowledged during oral argument, the exact amount of
17 damages in unpaid royalties must still be proved.

18 B. Counterclaims against MTI -- Alter Ego Theory

19 PTI argues that the Court should grant summary judgment as to
20 Tessera's claims against MTI because Tessera cannot prove that MTI
21 is an alter ego of PTI. PTI misses the mark. Tessera's theories
22 of liability against MTI do not rely upon a claim that MTI was
23 PTI's alter ego. Rather, Tessera merely claims that PTI and MTI
24 acted together in violation of the law to transfer to MTI PTI's
25 long-term business relationship with Elpida. Tessera does not
26 seek to hold MTI liable solely for PTI's actions, or vice versa,
27 so an alter ego theory is inapplicable.
28

1 C. Implied Covenant of Good Faith and Fair Dealing
2 Tessera claims PTI violated the implied covenant by
3 transferring the Elpida packaging business to its wholly-owned
4 subsidiary, MTI, to avoid paying royalties to Tessera. PTI now
5 challenges the viability of this claim.

6 PTI challenges that Tessera's implied covenant theory
7 attempts to vary the terms of the TCC License. PTI is correct
8 that the implied covenant of good faith and fair dealing applies
9 only to the parties to a contract and additionally cannot be used
10 to vary the express terms of the agreement. See Carma Developers,
11 Inc. v. Marathon Dev. California, Inc., 2 Cal. 4th 342, 374
12 (1992). MTI did not agree to be bound under the TCC License, and
13 so by definition is not a "License Affiliate" under the contract.
14 See TCC License § I.H (stating that a "License Affiliate" is one
15 who has more than fifty percent of its stock controlled by
16 Licensee and agrees to be bound by the terms of the contract).
17 PTI contends that because the TCC License impliedly allows for
18 subsidiaries that are not "License Affiliates," Tessera is
19 attempting to alter the contract by holding PTI liable for
20 funneling business through MTI.

21 But Tessera's theory that PTI breached the implied covenant
22 does not seek to contradict any express terms. Instead, Tessera's
23 theory seeks the benefit of its express right under the contract
24 to receive royalty payments. This falls squarely under the law of
25 the implied covenant, which requires that a party refrain from
26 doing anything that would deprive the other party of the benefits
27 of the contract. April Enter., Inc. v. KTTV, 147 Cal. App. 3d
28 805, 816 (1983). In cases where one party has a discretionary

1 right under a contract, the implied covenant applies with
2 particular force and requires that the party exercise its
3 discretionary right in good faith. Carma Developers, Inc., 2 Cal.
4 4th at 372. While the act of redirecting business to a subsidiary
5 does not necessarily violate an express term of the TCC License,
6 it could be a violation of the implied covenant if it was done
7 with the intent to deprive the other party of the benefits of the
8 contract. PTI's motion on this issue is DENIED.

9 D. Fraudulent Transfer

10 Another of Tessera's claims is that PTI fraudulently
11 transferred the Elpida business to MTI. Under California's
12 Fraudulent Transfer Act, "a transfer is fraudulent, both as to
13 present and future creditors, if it is made '[w]ith actual intent
14 to hinder, delay, or defraud any creditor of the debtor.'" Mejia
15 v. Reed, 31 Cal. 4th 657, 664 (2003) (quoting Cal. Civ. Code
16 § 3439.04(a)).

17 PTI argues that its business relationship with Elpida cannot
18 be property because the relationship was not guaranteed by
19 contract, meaning Elpida could terminate at any time and go
20 elsewhere. For purposes of fraudulent transfer, an "asset" is
21 "property of a debtor," and property means "anything that may be
22 the subject of ownership." Cal. Civ. Code § 3439.01(a) and (h).

23 The Ninth Circuit has specifically stated that bankruptcy
24 case law may be persuasive in considering California statutes that
25 are substantially similar, including California's fraudulent
26 transfer statute. See In re AFI Holding, Inc., 525 F.3d 700, 703
27 (9th Cir. 2008). Tessera cites a number of bankruptcy cases
28 ruling that intangibles not guaranteed by contract can be

1 fraudulently transferred assets, such as a "book of business,"
2 corporate goodwill, or ongoing business concerns. See In re
3 Bellingham Insurance Agency, Inc., 702 F.3d 553, 571 (9th Cir.
4 2012) (holding that the "transfer of an ongoing business concern"
5 in the form of the insurance firm's biggest client constituted a
6 fraudulent transfer). See also In re Watman, 301 F.3d 3, 12 (1st
7 Cir. 2002) ("There is substantial support in bankruptcy case law
8 for the proposition that such intangible assets as goodwill and
9 overall going concern are valuable"); Hunt v. Phinney, 177 Cal.
10 App. 2d 212, 216 (1960) ("It has been repeatedly held that the
11 goodwill of a business is property and as such will be protected
12 by the courts."). PTI's recurring business relationship is
13 similar to a book of business or a large client; even though
14 Elpida could go elsewhere at any time, having that relationship is
15 undoubtedly an asset to PTI's business. See In re Bellingham
16 Insurance Agency, Inc., 702 F.3d at 571. Although in many of the
17 cases cited by Tessera, a substantial portion of the debtor's
18 customer base or industry was transferred, there is evidence that
19 the Elpida relationship represented a large percentage of PTI's
20 business. Accordingly, the Court DENIES PTI's motion on Tessera's
21 fraudulent transfer claim.

22 E. Intentional and Negligent Interference with Prospective
23 Economic Advantage

24 PTI argues that Tessera's interference claims must fail
25 because the relationship with Elpida was not an "economic
26 advantage" and Tessera cannot prove that PTI engaged in a wrongful
27 act other than the act of interference itself.
28

1 PTI argues without citation to legal authority that contract
2 negotiations cannot constitute an economic relationship for
3 purposes of Tessera's claims for intentional and negligent
4 interference with prospective economic advantage. As Tessera
5 points out, however, Elpida and Tessera were in licensing
6 negotiations while PTI was collaborating with Elpida. Mills
7 Decl., Ex. CD, Tsai Depo. at 128:7-20; Ex. DH, Kota Takemura Depo.
8 at 22:25-23:16, 33:12-34:8, 93:7-15. Courts have recognized that
9 the "possibility of an economic relationship," with the
10 "probability of economic benefit," or "business discussions" with
11 a prospective customer, can form grounds for an interference
12 claim. Centigram Argentina, S.A. v. Centigram Inc., 60 F. Supp.
13 2d 1003, 1005, 1013 (N.D. Cal. 1999); Silicon Labs Integration,
14 Inc. v. Melman, 2010 WL 890140, at *2 (N.D. Cal.); Impreva Labs,
15 Inc. v. Sys. Planning Corp., 2012 WL 3647716, at *6 (N.D. Cal.).

16 It is also well-established that as part of an interference
17 claim, the plaintiff must prove the defendant's conduct was
18 "wrongful by some legal measure other than the fact of
19 interference itself." Korea Supply Co. v. Lockheed Martin Corp.,
20 29 Cal. 4th 1134, 1153 (2003). To satisfy this element, Tessera
21 points to its analysis in the fraudulent transfer section. See
22 Docket No. 407 at 36. Making all inferences in favor of Tessera,
23 the Court takes this to mean that the alleged independent,
24 wrongful act is that PTI fraudulently transferred business to MTI
25 in order to dodge TCC License obligations, giving it an unfair
26 advantage in competing with Tessera for a relationship with
27 Elpida. This raises a disputed issue and the Court therefore
28

1 DENIES PTI's motion for summary judgment on the interference
2 claims.

3 F. Indemnification Claim

4 PTI seeks summary judgment on Tessera's claim that, under the
5 TCC License Indemnification Clause, PTI must reimburse Tessera for
6 litigation fees and costs expended in bringing the 630
7 Investigation. The Indemnification Clause provides:

8 Licensee agrees to defend, indemnify, and hold Tessera
9 harmless from and against any and all damages, liabilities,
10 costs and expenses (including reasonable attorneys [sic] fees
11 and expenses) arising out of or related to Licensee's use of
12 Tessera Patents. Notwithstanding, Licensee shall not bear
13 the obligation or expense of defending the validity of any
14 Tessera Patent. Tessera shall have sole control over and
15 bear the expense for so defending the validity of the Tessera
16 Patents.

17 TCC License § XIII.A.

18 First, Tessera cannot have it both ways. Tessera argues in
19 regards to the parties' breach of contract claims that the 630
20 Investigation did not implicate PTI-packaged products. Now, in
21 its indemnification claim, Tessera switches positions and asserts
22 the 630 Investigation "arises out of or relates to" PTI's use of
23 the Tessera patents. This is patently inconsistent.

24 Second, the Indemnification Clause protects Tessera from
25 third-party claims generated by PTI's use of Tessera's patents.
26 This is evidenced by the clause's use of the phrase, "Licensee
27 agrees to defend, indemnify, and hold Tessera harmless," all of
28 which emphasizes defensive action. It does not address a separate
suit initiated by Tessera itself to protect its own patent rights
and obtain royalty payments. This is in line with the typical
construction of indemnification claims, which refer to defending

1 third-party actions. See Myers Bldg. Indus., Ltd. v. Interface
2 Tech., Inc., 13 Cal. App. 4th 949, 962 (1993). Tessera's
3 interpretation departs both from the plain language of the
4 contract and the courts' interpretation of similar indemnification
5 clauses. As such, the Court GRANTS PTI's motion on Tessera's
6 indemnification claim.

7 G. Declaratory Judgment that "Testing-Only" Products are
8 Subject to Royalty

9 Some products are packaged by MTI or others and then tested
10 by PTI. PTI and Tessera disagree over whether these products are
11 covered by the TCC License. Regarding Tessera's declaratory
12 judgment claim on this issue, PTI asserts it is entitled to
13 judgment as a matter of law because only products which PTI
14 "assembles" are licensed.

15 PTI argues that, according to its language, the TCC License
16 covers only the right "to assemble ICs into TCC Licensed Products
17 and use or sell such TCC Licensed Products." TCC License § II.A.
18 However, Tessera has raised in response at least a triable issue
19 of fact on the scope of the license grant. Tessera first notes
20 that testing may fall within PTI's broad usage of the TCC Licensed
21 Products, "whether sold, transferred or used internally." Id.
22 § III.B. Further, a factual dispute exists regarding whether
23 "assembly" can be understood in the field to include "testing."
24 Tessera presents evidence indicating that it does. See Mills
25 Decl., Ex. DM, Bravman Depo. at 157:21-158:3, Ex. DN, Gwinnell
26 Depo. at 245:20-25. There are triable issues regarding the TCC
27 License's scope and so PTI's motion on this point must be DENIED.
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CONCLUSION

Regarding PTI's claim for declaratory judgment that it has the right to terminate the contract, the Court GRANTS summary judgment in favor of Tessera. Regarding Tessera's identical declaratory judgment action that PTI has no right to terminate the contract, the Court also GRANTS summary judgment in favor of Tessera.

The Court GRANTS summary judgment in favor of Tessera on PTI's breach of contract claim.

The Court GRANTS Tessera's motion for summary judgment on PTI's fraud claim.

The Court GRANTS Tessera's motion for summary judgment on PTI's claims for patent misuse and for declaratory judgment that the TCC License requires infringement for royalty obligations to accrue.

On Tessera's breach of contract claim, the Court GRANTS summary judgment in favor of Tessera. The issue of the exact amount of damages remains.

The Court DENIES PTI's motion for summary judgment on Tessera's claim for breach of the implied covenant of good faith and fair dealing.

The Court DENIES PTI's motion for summary judgment on Tessera's claim for fraudulent transfer.

The Court DENIES PTI's motion for summary judgment on Tessera's interference claims.

The Court GRANTS PTI's motion for summary judgment on Tessera's claim for declaratory judgment of indemnification.

1 The Court DENIES PTI's motion that testing-only products be
2 excluded from the breach of contract damages.

3 The Court DENIES PTI's motion to preclude Tessera's claims
4 based on lack of an alter ego theory.

5 No summary judgment motion was made on Tessera's claim for
6 breach of the implied covenant of good faith and fair dealing and
7 PTI's claims for fraud and negligent misrepresentation.

8 In sum, of PTI's complaint, only its claim for breach of the
9 implied covenant of good faith and fair dealing remains. Of
10 Tessera's complaint, its claims for breach of the implied covenant
11 of good faith and fair dealing, fraud, fraudulent transfer,
12 negligent misrepresentation, intentional and negligent
13 interference with prospective economic advantage, inducing breach
14 of contract, and constructive trust survive. The issue of
15 Tessera's contract damages remains to be adjudicated.

16 The parties shall attend a settlement conference with Judge
17 Grewal within sixty days of the issuance of this order. The
18 parties are directed to contact Judge Grewal's courtroom deputy to
19 schedule a date for the settlement conference.

20
21 IT IS SO ORDERED.

22
23 Dated: 1/15/2014


CLAUDIA WILKEN
United States District Judge

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26 cc: MagRef; PSG

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