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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTELLISOFT LTD.,

Plaintiff,

v.

TOSHIBA CORPORATION, et al.,

Defendants.

No. C 12-3128 PJH

**ORDER RE MOTION TO DISMISS;  
ORDER STAYING CASE**

The motion of defendant Toshiba America Information Systems, Inc. ("TAIS") for an order dismissing the claims asserted against it in the first amended complaint ("FAC") came on for hearing before this court on September 12, 2012. Plaintiff Intellisoft Ltd. appeared by its counsel J. Paul Gignac, and TAIS appeared by its counsel Irfan Lateef and Timothy Goodson. Having read the parties' papers and carefully considered their arguments, and good cause appearing, the court hereby rules as follows and for the reasons stated at the hearing.

The motion to dismiss the FAC for lack of standing is DENIED, as the court finds that that issue must be decided based on a factual record. The motion to dismiss the FAC based on the running of the statute of limitations is GRANTED with leave to amend to allege facts showing that the running of the statute was tolled based on application of the discovery rule. Because a similar issue is currently under appeal in the case of Bierman v. IBM, C-10-4199 PJH, the court finds that the present case should be STAYED pending a

1 ruling by the Ninth Circuit. The second amended complaint will be due 30 days after the  
2 stay is lifted.

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4 **IT IS SO ORDERED.**

5 Dated: September 13, 2012



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PHYLLIS J. HAMILTON  
United States District Judge

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