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6 *ATTORNEYS FOR PLAINTIFFS*

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 **INTERSERVE, INC., dba TECHCRUNCH, )**  
**a Delaware corporation, and CRUNCHPAD, )**  
**INC., a Delaware corporation, )**  
12 Plaintiffs, )  
13 vs. )  
14 **FUSION GARAGE PTE. LTD., a Singapore )**  
**company, )**  
15 Defendant. )  
16

Case No. CV-09-5812 JW (PVT)  
17  
18 SUPPLEMENTARY NOTICE RE  
TECHCRUNCH'S MOTION FOR  
19 EXPEDITED DISCOVERY (DKT NO. 11)

20 Plaintiffs ask that discovery start before the Rule 26 conference (Dkt. Nos. 11-13).  
21 Defendant opposes this request in part because of a pending trial (Dkt. Nos. 14-15). That pending  
22 trial has apparently settled; see Exhibit A.

23 Respectfully submitted,

24 Dated: January 6, 2010

WINSTON & STRAWN LLP

25 By: /s/ David S. Bloch  
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26 David S. Bloch  
Attorneys for Plaintiffs  
27 INTERSERVE, INC. dba  
TECHCRUNCH and CRUNCHPAD

28 SF:270869.1

# **EXHIBIT A**

### Friends With Money

In politics, you gotta be either rich or popular to even get in the game. Guess which one Facebook lawyer Chris Kelly is. *On Legal Pad.*

<http://legalpad.typepad.com>



### Chipping In

Lawyers who want KLA-Tencor GC Brian Martin's business need to know the company, he says, so they can run as fast as he can. *See In-House Counsel.*

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The Recorder(10)  
Library

# THE RECORDER

WEDNESDAY, JANUARY 6, 2010 134TH YEAR NO. 3 www.callaw.com An

## Irked judge rewrites late settlement



JASON DORY

**MAKING PEACE:** Prompted by a nonplussed judge, MoFo attorney Michael Jacobs, and his opposing counsel, apologized to jurors who had come to court only to find the case had settled at the last minute.

**By Zusha Ellinson**  
RECORDER STAFF WRITER

Judge William Alsop punctuated a courtroom-steps settlement in a novel trademark case by asking the lawyers to rewrite the agreement on the fly and apologize to the jury pool for wasting their morning.

It was the latest dramatic turn in a case that had been set for trial Tuesday morning, featuring two leading IP lawyers: Michael Jacobs for software giant Autodesk Inc. and Claude Stern for Dassault Systèmes SolidWorks Corp. The case raised the unique issue of whether a software company could trademark a widely used name for a type of computer file.

Autodesk, represented by Morrison & Foerster's Jacobs, sued SolidWorks for trademark infringement over the use of three letters: DWG. That's the extension given to design files, much like .jpg is given to photos or .txt is given to text files.

Autodesk, a leading maker of 2-D and 3-D design software used by engineers and artists, has launched an effort to trademark "DWG," which it uses on its packaging. The suit alleged that

See AUTODESK page 6

## Judge wh trial shon 'severe' ca

**By Cheryl Miller**  
RECORDER STAFF WRITER

SACRAMENTO — judge accused of becom a 2006 divorce case re public censure from th Judicial Performance o Commissioners saic Judge Peter McBrien v right to due process wh ended the trial of Mon Ulf Johan Carlsson — ness mid-testimony — days of proceedings. The judge also imp

## McBRIEN

Continued from page 1

bara Schraeger, two public members appointed by the state Senate, voted to remove the judge from office.

McBrien "respects the decision," said the judge's attorney, James Murphy of Murphy, Pearson, Bradley & Feeney in San Francisco. "He obviously regrets the way he handled the case."

McBrien argued that he ended the trial abruptly because the lawyers involved had estimated that it would only take two days, the typical time limit for a family court proceeding. If Ulf Carlsson's attorney needed more time, she should have asked for it, McBrien told commissioners.

Murphy said the commission's finding that McBrien violated Carlsson's right to due process could have a chilling effect on other trial courts.

"They're sending a message to the rest of the judiciary, the state courts, that the concept of only allowing a party a specific amount of time may not be allowable," Murphy said. "If you start letting the attorneys take as much time as possible, the whole structure is going to break down."

But commissioners said they weren't questioning a judge's authority to set time limits.

"Judge McBrien cut off the presentation of evidence without determining what remaining evidence the parties intended to present or even taking the matter under submission," the commission wrote. "As the attorneys, parties, witness, and court staff waited in the courtroom uncertain how to proceed, Judge McBrien called his residence and left the courthouse without determining if the parties were waiting for him to return."

In 2008, the Third District Court of

Appeal overturned McBrien's ruling in the Carlssons' divorce. Ulf Carlsson was fired from his job at the state Department of General Services after McBrien sent his superiors documents

'[The CJP is] sending a message ... that the concept of only allowing a party a specific amount of time may not be allowable.'

— JAMES MURPHY  
Murphy, Pearson

raising concerns about financial dealings Carlsson had with an investor who in turn had business with the state.

Carlsson worked unsuccessfully on a campaign to unseat McBrien in the 2008 election.

McBrien continues to work in the Sacramento court's family law department.

Reporter Cheryl Miller's e-mail address is [cmiller@alm.com](mailto:cmiller@alm.com).



**THE UPSIDE:**  
Quinn Emanuel attorney Claude Stern said that securing the right to use a particular file extension was a victory for his client.

RECORDER FILE  
(2006)

## AUTODESK

Continued from page 1

SolidWorks, which makes software similar to Autodesk and has products with names like DWGeditor and DWGviewer, was infringing and engaged in false advertising.

SolidWorks, represented by Quinn Emanuel Urquhart Oliver & Hedges' Stern, contended that trademarks can't be used to protect functions like file extensions and leveled counterclaims at Autodesk.

Some critics believed Autodesk was misusing trademark law to protect its software from competitors and limit the way the files could be used with competing software. "There are no file-name extensions used interoperably that are trademarked," said Evan Yares, a consultant in the computer-aided-design software industry who had flown from Phoenix to view the trial.

The settlement agreement was reached Monday night. The lawyers sent a letter to the court at 12:23 a.m. Tuesday announcing a settlement. But in the morning, Alsup was less than thrilled with the parties' stipulation as part of the agreement that the court had held the trademark valid.

Growing stern, Alsup told the lawyers, "I will not let you walk out of this courthouse" with a settlement stating that "a judgment was entered" in favor of Autodesk's mark. Stern and Jacobs scrambled out of the courtroom, and after back-and-forths between clients and lawyers alike, came back with a new agreement. The final draft said that the parties agreed that DWG is a valid trademark, but emphasized twice that the court did not rule on the issue. The terms of the settlement were confidential aside from the brief stipulation.

Alsup is "being a good guardian of the law in not wanting to be a party to something that may be used beyond an agreement or concessions between parties," said Neil Smith, an IP lawyer with Sheppard, Mullin, Richter & Hampton who was not involved in the case. He said Alsup was wise to head off the danger of the settlement being "waved around as a finding of

validity."

At the hearing, Alsup was sympathetic to the potential jurors who'd come to court only to find that there was no case to weigh. When MoFo's Jacobs suggested that the firms pay for the jurors' time, Alsup commented that the lawyers were used to "big-firm practice, where money solves all problems," and suggested an apology instead.

A crowd of more than 30 potential jurors filed into the courtroom and Alsup thanked them for "service to your country" and also praised Jacobs and Stern as fine lawyers that would have put on a good trial. Jacobs and Stern thanked the jurors and apologized for the inconvenience.

"We were up quite late last night," Jacobs said. "We're very sorry we couldn't have done it sooner."

The agreement came after an eventful summary judgment hearing last month, in which Alsup asked MoFo senior associate Nathan Sabri, also representing Autodesk, to "disavow, from here to eternity and for the rest of the universe," any claim that using .dwg as a file extension would violate Autodesk's trademark.

Alsup later issued a summary judgment order partially in favor of Autodesk, but when the MoFo lawyers tried to disavow the disavowal after the fact, Alsup wrote another opinion in which he said he would refuse to let them renege. The lawyer for SolidWorks, Stern, said he saw that as a victory.


"I think we felt that we and the CAD industry achieved remarkable victory ... when we got the disavowal," Stern said.

MoFo's Jacobs said Autodesk had a strong case.

"We felt very good about our prospects and were geared up for trial," he said. "We're pleased that we reached a settlement."

Reporter Zusha Elinson's e-mail address is [zelinson@alm.com](mailto:zelinson@alm.com).

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