

EX PARTE OR LATE FILED

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MAR 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Portals
Washington, D.C. 20554

Re: Ex parte communication in ET Docket No. 98-206; RM-9147; RM-9245; Experimental License Call Sign WC2XPU, FCC File Nos. 0005-EX-ML-2002, 0074-EX-RR-2003

Dear Ms. Dortch:

The attached letter on behalf of Northpoint Technology, Ltd., was submitted to Charles Iseman in the Commission's Office of Engineering and Technology today. Please place it on the record in the above-referenced proceedings.

Eleven copies of this letter are enclosed – two for inclusion in each of the above-referenced files, plus one for date-stamp and return in the enclosed, self-addressed envelope. Please contact me if you have any questions.

Sincerely,



J.C. Rozendaal
Counsel for Northpoint Technology, Ltd.

Enclosures

No. of Copies rec'd 0710
List ABCDE

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EX PARTE

Mr. Charles J. Iseman
Deputy Chief
Electromagnetic Compatibility Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Ex parte communication in ET Docket No. 98-206; RM-9147; RM-9245;
Experimental License Call Sign WC2XPU, FCC File Nos. 0005-EX-ML-
2002, 0074-EX-RR-2003**

Dear Mr. Iseman:

I write on behalf of Northpoint Technology, Ltd. ("Northpoint"), in response to your e-mail of March 19 requesting that the parties supplement the record in the above-referenced matters by documenting the status of the patent suit brought by Northpoint against MDS America, Inc. and MDS International, S.A.R.I (collectively, "MDS").

Northpoint sued MDS in the U.S. District Court for the Southern District of Florida and alleged that MDS had infringed three claims in two of Northpoint's patents: claims 1 and 7 of U.S. Patent No. 6,169,878, and claim 8 of U.S. Patent No. 5,761,605. On November 5, 2003, a jury found that MDS America did in fact infringe those three claims but also found that the asserted claims were invalid. On December 16, 2003, the court entered judgment on the jury's verdict. On the same date, the court rejected MDS's counterclaim that the patents should be declared unenforceable due to alleged inequitable conduct by Northpoint. Northpoint moved for judgment as a matter of law that the claims were valid or, alternatively, for a new trial. The court denied Northpoint's motion on January 26, 2004.

Northpoint appealed the court's decision to the U.S. Court of Appeals for the Federal Circuit, and MDS filed its own cross-appeal. The case is now pending before the Federal Circuit, and Northpoint is confident that the invalidated claims will be declared valid on appeal.

Mr. Charles J. Iseman
March 26, 2004
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Regardless of the outcome of Northpoint's pending appeal, however, the two patents in suit have 32 additional claims that remain in force and retain their presumption of validity. Northpoint also has additional patents that were not before the jury in Florida, with scores of claims that remain in full force.

Northpoint understands that counsel for MDS America will provide you with copies of the jury verdict, the court's post-trial decisions, the final judgment, and the notices of appeal. Northpoint writes separately to emphasize the narrowness of the jury's verdict, which affects only three of the 35 claims of the two patents in suit, and which has no effect at all on Northpoint's other patents relating to its revolutionary technology. Northpoint also wishes to underscore that it fully expects all three invalidated claims to be reinstated in full force on appeal.

If you have any questions or desire further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "J.C. Rozendaal", followed by a horizontal line extending to the right.

J.C. Rozendaal
Counsel for Northpoint Technology, Ltd.