

March 4, 2009

HAND-DELIVERY & FACSIMILE

Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
Attn.: Michael Kwun, Esq.
Senior Staff Attorney

Re: Demand for Retraction of Defamatory Statements by EFF regarding Seer Systems, Inc.

To: The Electronic Frontier Foundation:

We write on behalf of our clients, Seer Systems, Inc. and Stanley Jungleib, to demand that the Electronic Frontier Foundation ("EFF") immediately retract certain false and defamatory statements identified below.

False and Defamatory Statements Identified Last Week.

At the meeting Monday, February 17, 2009, at your offices attended by Mr. Kwun of the EFF, me, [REDACTED], Seer's patent prosecution counsel, [REDACTED] and by telephone by the EFF's outside attorney Rene Brown, we specifically identified two statements published by the EFF on its website:

Defamation 1: *"Currently threatening small companies trying to innovate in this field, like Beatnik"*

Defamation 2: *"Threatening to compromise at least two public media standards — MPEG4 and XMF."*

Defamation 1: *"Currently threatening small companies trying to innovate in this field, like Beatnik"*

At last Monday's meeting, we confirmed what it appears the EFF already knew: there was and is no factual basis for the first statement as Seer has only made 3 claims ever, and never against any "small" company regarding its '274 patent. Those claims were against Microsoft, Yamaha and Beatnik. We trust the EFF admits, as it must, that the former two corporations are not "small." And, we believe EFF knew or recklessly disregarded that Beatnik, at the time of the

subject claim by Seer in 2004-2006, had received at least \$40Mn. in funding, and claimed that the subject technology was in "over 250 million handsets. Mobile devices from more than eight of the leading manufacturers, including Nokia, Motorola, Sony Ericsson, Siemens and Samsung...." The proof is in the "press release" section of the Beatnik website. Beatnik was no "small" company at any material time.

In addition to the above, we confirmed at the aforesaid meeting, that EFF would find no evidence of any threats of any type by Seer as regards any other companies, as none occurred.

At the meeting, neither you nor Ms. Brown denied the fact that the first statement referenced above is false and baseless. Instead, you and your colleague were silent. And to date, EFF has not denied the falsity of that statement and, worse yet, continues to publish it at its website. Malice is thus evident.

Defamation 2: "*Threatening to compromise at least two public media standards — MPEG4 and XMF.*"

Next, at the aforesaid meeting, we informed you that Seer had no present understanding as to what EFF was alluding to by the second statement identified above. Seer has made no such threats. We asked for the basis for this statement, if any. Again, you and your colleague were silent. And do date, EFF has not provided any basis and continues to publish said statement. Malice is thus evident.

Additional False and Defamatory Statements Identified Herein.

Following the meeting we had the opportunity to further review the EFF website. There, we found more falsehoods directed by the EFF against Seer, as well as defamatory statements as regards Mr. Jungleib.

Defamation 3: "*Crimes against the public domain.*"

We see that the EFF website states there that the above identified two false statements are in the category of "*Crimes against the public domain.*" And that attached immediately below them are filings by the EFF with the USPTO and the latter.

The EFF by linking governmental filings to the statement "*Crimes against the public domain,*" and the two additional statements cited above, is creating the false message to the reader that there has been a crime charged against Seer, which, of course, is not true.

And, the EFF by attaching its filing directly below the statement "*Crimes against the public domain*" provokes the likely reaction by the reader to open its filing and see the following additional false statements:

March 4, 2009

Page 3

"Moreover, the '274 patent is causing substantial public harm by stifling development in the digital music composition and playback field, and is threatening to compromise at least two public media standards MPEG4 and XMF. In fact, the '274 patent has already been asserted against small companies and is currently threatening others trying to innovate in this field." (EFF, ReExam Requests, page 1, paragraph 2.)

No "crime" has been charged against Seer (or should be charged) relative to the above, as there is no evidence that Seer's '274 patent is (a) "causing substantial public harm" and/or (b) "stifling development in the digital music composition and playback field." Nor is there any evidence that its patent "is threatening to compromise at least two public media standards MPEG4 and XMF." And it is not a "fact [that] the '274 patent (x) "has already been asserted against small companies" and/or (y) "is currently threatening others trying to innovate in this field." These statements are all false, baseless and the product of malice.

Defamation 4: August 1, 2008 Disparaging Statements re '274 Patent and Mr. Jungleib

Lastly, inexplicably, and worst of all, is the public attack upon Mr. Jungleib and "smear campaign" that you launched for EFF in August of last year.

In this regard, on August 1, 2008, you published on behalf of the EFF the following public statement and purposefully sought its republication:

"Mr. Jungleib extensively publicized techniques for music distribution in his book, and he did not seek a patent until after the methods entered the public domain," said EFF Senior Intellectual Property Attorney Michael Kwun." By so doing, you created the false message that each '274 claim was and is described in the book, "General Midi."

Next, you stated to the effect that Mr. Jungleib is acting *in bad faith* by linking the above to the statement that: *"Patenting technology that has already been publicly disclosed and widely adopted opens the door to lawsuits against legitimate innovators who are creating new products in good faith."*

You went on to suggest as a fact that the '274 patent is *"invalid."* You flatly stated it is *"illegitimate."* You then republished the false statement that the Seer *"threatens to compromise at least two public media standards, MPEG4 and XMF."* And you obtained a quote from an attorney who represents the EFF who, speaking as a representative of the EFF, stated to the effect that the '274 patent is contrary to the *"United States patent system [which] is meant to encourage, not stifle, innovation...."*

The above statements in the EFF press releases of August 1, 2008 are each false. Among other things, Mr. Jungleib's book does not identify, disclose or otherwise describe *all* of the '274 elements. You had no basis whatsoever to say that the entire '274 patent, and each of its claims, is invalid, illegitimate or threatening anything. Malice is thus evident.

March 4, 2009

Page 4

Defamation 5: January 7, 2009 Disparaging Statements re '274 Patent and Mr. Jungleib

On January 7, 2009, you again published statements similar to those issued by you on August 1, 2008. And again, you attacked Mr. Jungleib's good reputation and purposefully sought republication. You said:

"Mr. Jungleib encouraged others to use the techniques he described in his book and sought patent protection only after those ideas had entered the public domain," said EFF Senior Intellectual Property Attorney Michael Kwon."

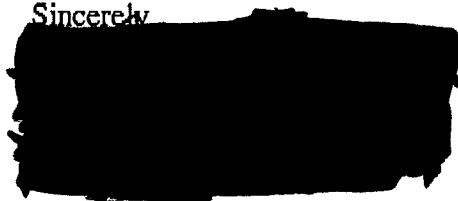
Next, you said that it's *"unfortunate that Seer Systems [a company that you know is solely owned by Mr. Jungleib and that was not the patent applicant, Mr. Jungleib was, as you also know] didn't call Mr. Jungleib's book and the other prior art we cited to the PTO's attention before the patent issued."*

You then sought out and obtained a quote from an attorney who represents the EFF who, speaking as a representative of the EFF, stated to the effect that the '274 patent is one of a number of *"[u]meritorious patents [that] can place significant barriers in the way of innovation in the digital age...."*

For the same reasons as pertained to your August 1, 2008, press release, each of the above statements is false, baseless and the product of malice.

Given the above, demand is hereby made that the EFF immediately retract all of the above statements, cease publishing them and issue a public apology to Mr. Jungleib and Seer. We will check the EFF's website again on Friday, March 6, 2009, at noon (Pacific). Should the EFF not duly proceed as demanded above by then, the appropriate civil action will be commenced.

Sincerely

A large black rectangular redaction box covering the signature and name of the sender.

Cc: Rene Brown, Esq. (Via Facsimile)

 Esq.

Clients