EXHIBIT H Part 1

Carnegie Mellon University's Presentation on Laches - Dkt. 802

May 1 – 2, 2013

Carnegie Mellon

Laches is an Equitable Defense and is Not Available When the Equities Favor the Plaintiff

Laches "is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them."

Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1162 (Fed. Cir. 1993) (citing *Halsted v. Grinnan*, 152 U.S. 412, 417 (1894))

If the defendant establishes the factual predicates to laches, the court then "weighs the equities in order to assess whether laches should apply to bar those damages that accrued prior to suit."

State Contracting & Eng'g Corp. v. Condotte Am., Inc., 346 F.3d 1057, 1065 (Fed. Cir. 2003)

- **The equities here favor CMU:**
  - **Marvell was aware of CMU's patent by January of 2002, but continued infringing**
  - **Marvell ignored CMU's inquiry (made in 2003, within the six-year laches period)**
  - **CMU had no way of knowing of Marvell's infringement, due to Marvell's secrecy**
  - **Even after litigation began, Marvell concealed key facts and has continued infringing to this day**

Marvell Has Not Proven Laches

Marvell is not entitled to a presumption of laches

Marvell has not proven that CMU unreasonably delayed in filing suit

Marvell has not proven either economic or evidentiary prejudice

Marvell's egregious misconduct further tilts the equities in CMU's favor

Marvell is Not Entitled to a Presumption of Laches

The law affords infringers a rebuttable presumption that a patentee's delay is unreasonable and prejudicial, but *only if* the infringer shows that the patentee "knew or reasonably should have known" of the infringement more than six years prior to filing suit.

Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp., 587 F.3d 1339, 1349-50 (Fed. Cir. 2009)

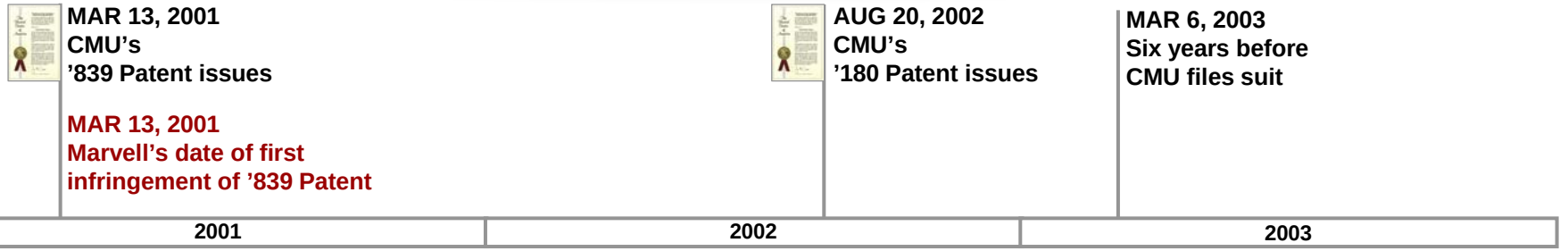
Even if the infringer proves a delay of six or more years, *evidence raising a genuine dispute* as to either delay *or* prejudice "bursts" the presumption, requiring the infringer to prove both elements.

Hemstreet v. Computer Entry Sys. Corp., 972 F.2d 1290, 1293 (Fed. Cir. 1992)

Marvell is Not Entitled to a Presumption of Laches

The laches period cannot begin to run until the patent issues and infringement begins.

See, e.g., Meyers v. Brooks Shoe, Inc., 912 F.2d 1459, 1462 (Fed. Cir. 1990) (overruled in part on other grounds by *A. C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1038-39 (Fed. Cir. 1992)); *see also Beam Laser Sys., Inc. v. Cox Commc'ns, Inc.*, 144 F. Supp. 2d 464, 469-70 (E.D. Va. 2001)



- **The laches clock cannot start ticking prior to March 13, 2001**
- **Marvell is entitled to a presumption of laches *only if*:**
  - **CMU had knowledge of facts that would have put it under a duty of inquiry at some point between *March 13, 2001 and March 6, 2003, and***
  - **CMU's reasonable inquiry would have led it to *actual or constructive discovery of Marvell's infringement***
- **Marvell's evidence fails on both counts**

Marvell is Not Entitled to a Presumption of Laches

- ***No evidence*** **that CMU had actual knowledge of Marvell's infringement prior to litigation, let alone, prior to March 6, 2003**
- ***No evidence*** **that CMU could have determined whether Marvell was infringing without access to Marvell's documents and engineers**
  - **Other than (possibly) the '585 patent, Marvell did not identify a single publicly available document that shows how its circuits work**

Marvell is Not Entitled to a Presumption of Laches

Marvell's theory on the presumption of laches (and on unreasonable delay) rests on its assertion that:

- **CMU was required to demand access to Marvell's documents and engineers, and**
- **Marvell would have complied with CMU's demands**

> no allegation of infringement) to Marvell (along with the rest of the industry).[3] But ***reasonable*** diligence in this case required CMU to either raise or else investigate its infringement concerns with Marvell. Besides being inadequate, CMU's inquiry with Seagate about Marvell's chips was

> Here, CMU never directly inquired about Marvell's suspected infringement or how its chips operate and thus cannot now assert that such an inquiry would have been futile. Moreover,

Dkt. 854 at 2, 4

Marvell is Not Entitled to a Presumption of Laches

If a patentee knows *facts* that would "put upon a man of ordinary intelligence the duty of inquiry," the patentee is "chargeable with such knowledge as he might have obtained upon inquiry."

Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1162 (Fed. Cir. 1993); *Wanlass v. Gen. Elec. Co.*, 148 F.3d 1334, 1338 (Fed. Cir. 1998)

The duty of inquiry, if it exists, only requires a patentee to "make *such inquiry and investigation as the circumstances reasonably suggest*."

Wanlass v. Gen. Elec. Co., 148 F.3d 1334, 1338 (Fed. Cir. 1998)

Where the facts known to the patentee do not establish a duty of inquiry, *or* where the patentee meets its duty but *does not discover or could not discover the infringement*, constructive knowledge does not exist and the laches clock does not start ticking.

See Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys., Inc., 988 F.2d. 1157, 1162 (Fed. Cir. 1993); *Wanlass v. Fedders Corp.*, 145 F.3d 1461, 1467 (Fed. Cir. 1998)

Marvell is Not Entitled to a Presumption of Laches

CMU was not under a duty to inquire at any time prior to March 6, 2003

- **The 1998 email between Dr. Kavcic and Nersi Nazari**
  - **During Dr. Kavcic's 1998 interview with Marvell, *Dr. Nazari affirmatively told him that Marvell was not using his invention***
  - ***Dr. Nazari's statement was true* – Marvell's infringement did not begin until March 2001**
- **Dr. Moura's May 2001 meeting notes**
  - **The evidence shows that CMU had no basis to know that Marvell had infringed**
- **Marvell's need for the CMU invention was never disclosed publicly and was not even written up internally until 2002 – well after the date of Dr. Moura's meeting notes**

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001

MAR 13, 2001
Burd simulates "Kavcic Method" covered by '839 patent

MAR 23, 2001
Burd reports that initial work with "Kavcic's media noise detector" was "*disappointing*"

APR 13, 2001
Kavcic sends to Moura list of contacts at chip makers, including Marvell

MAY 16, 2001
Moura meeting notes reflecting CMU discussion about promoting the Kavcic-Moura invention

MAY 17 and 30, 2001
Dr. White writes to Seagate and IBM informing them of the CMU patent and asking them to adopt the technology in the future

JUN 12, 2001
Burd writes up his non-linear single bit post-processor to address media noise (Marvell later abandons this approach)

DEC 21, 2001
Burd completes his infringing "KavcicPP" media noise detector

2001

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001

Marvell first used the CMU invention in March 2001 – but found it "disappointing"

From: Greg Burd
Sent: Friday, March 16, 2001 5:55 PM
To: Toai Doan
Subject: weekly status report

Chasing a mysterious bug in iterative simulator. Every now and when I get a sector which is totally corrupted (more than 2k bit errors). I think something goes wrong during the data exchange between matlab and C++, perhaps there is a naming convention conflict. The problem have not occurred after I renamed some variables, however I am not absolutely sure that the bug is gone all together.
Run small set of simulations for Viterbi detector with BM calculated as (y-y_hat)^2/var-log(var). We should expect about 0.5 dB gain (assuming that the

I started working on the Kavcic's model. I think it would be a good starting point to implement it into the simulator. The case described in the previous bullet would then become a special case of Kavcic's model. This would also give us a lower bound on the gains which can be achieved for media noise.
greg

I started working on the Kavcic's model. I think it would be a good starting point to implement it into the simulator.

P-227

From: Greg Burd
Sent: Friday, March 23, 2001 5:22 PM
To: Toai Doan
Subject: weekly status report

Worked on Implementing Kavcic's media noise detector. I got it debugged and running. However, using our media noise model, the results have been disappointing.

However, using our media noise model, the results have been disappointing.

which we use can be the reason for not seeing any sizable gains when using more complicated Viterbi detector in the presence of moderate amount of media noise. Basically at each transition we introduce a random jitter noise, i.e. there is no non-random media component which the detector can take advantage of. Itr seems that next thing we should do is to collect lots of real drive data and see what kind of media noise model one should use.
Added the code to collect error event probabilities to our simulator. Also got some error event statistics using analytical model.

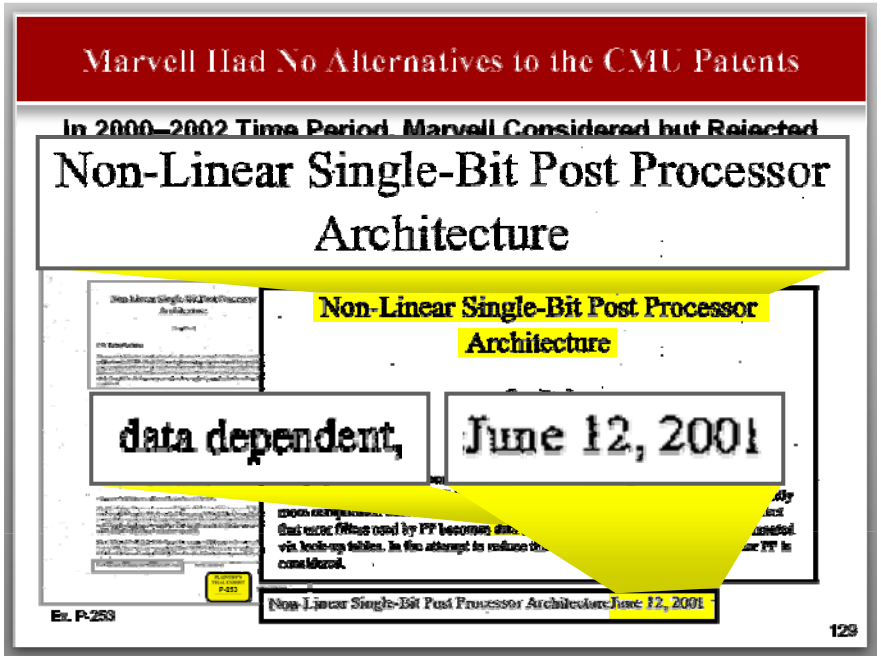
greg

DX-1060

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001

After "disappointing" initial results with the CMU invention, Marvell investigated possible alternatives:



P-Demo 7 at p. 129

Q. What -- let me direct your attention, sir, to P253, which is on Slide 129. Did you -- what does Exhibit P253 show?

A. This is a, a document called, nonlinear single bit post processor architecture. So, this is something written by Mr. Burd.

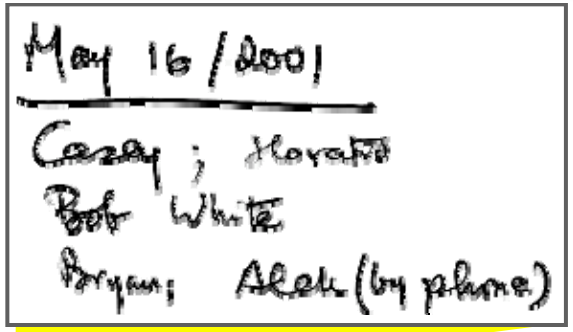
Q. Did Marvell ever implement this nonlinear single bit post processor architecture?

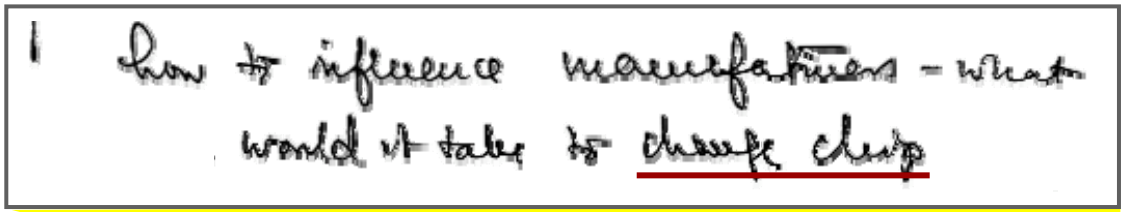
A. No.

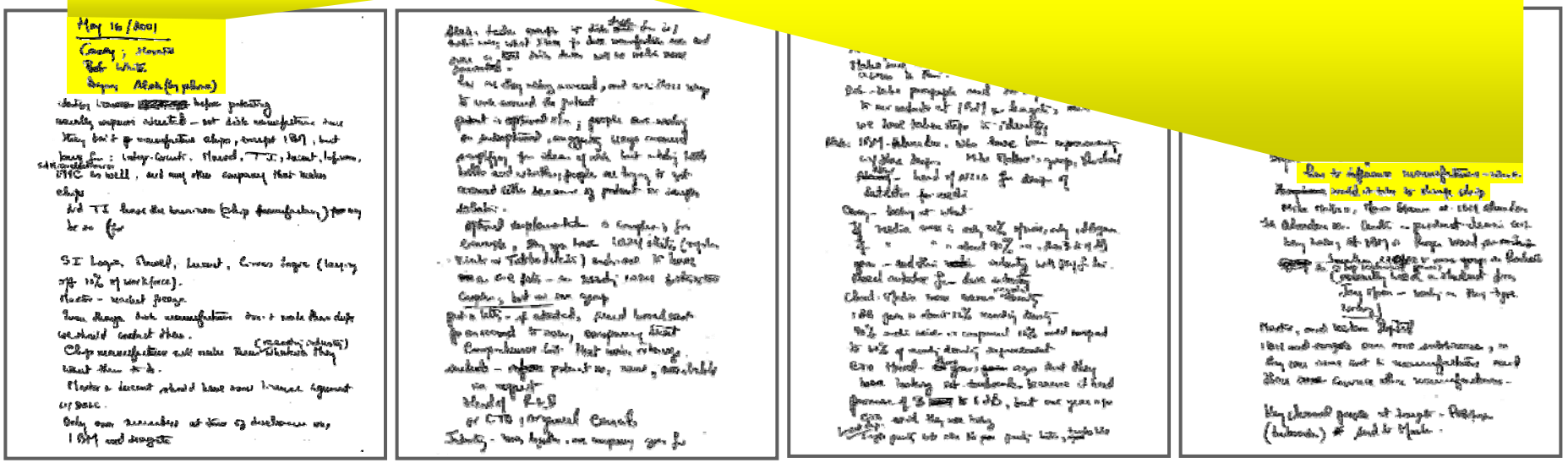
Dr. McLaughlin,12/3/12 Tr. at 191:7-15

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001







DX-1522, pp. 1-4

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001

Marvell ignores Dr. Kavcic's April 2001 email

Q. Is it an e-mail relating to your belief of potential infringers of the '839 patent as of April 13, 2001?

MR. GREENSWAG: Objection. mischaracterizes the document. Badly mischaracterizes the document.

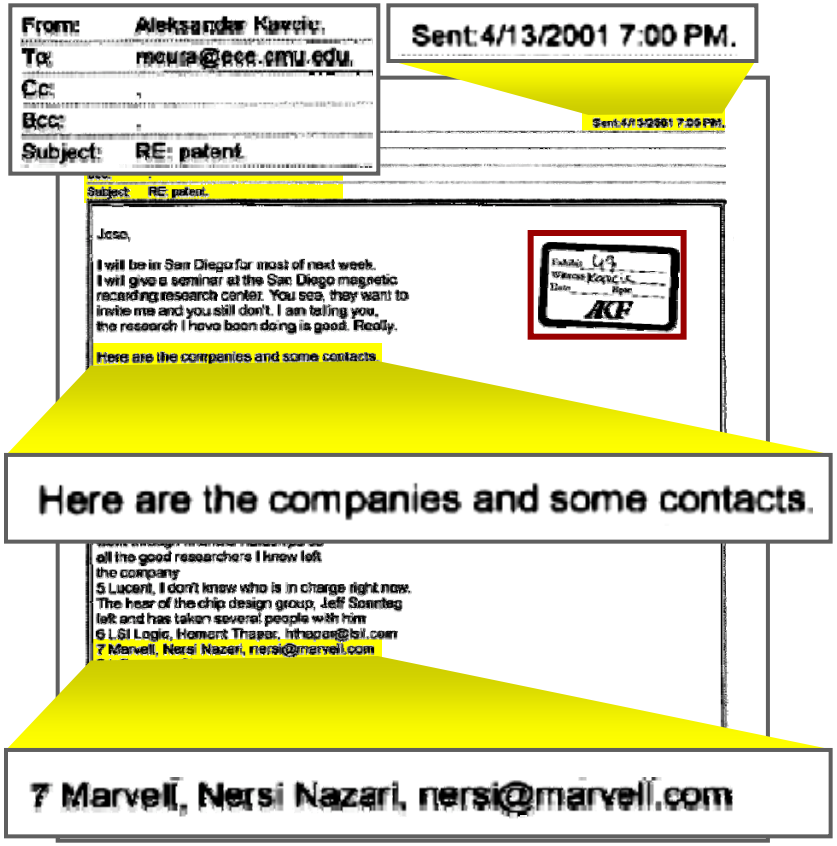
A. I wouldn't say that this is something that talks about infringers at all.

Kavcic Dep. 809:10-17

Q. As of April 2001, did you believe that any of the companies listed on the first page of Exhibit 47 may be infringing your '839 patent?

A. I don't think I believed that.

Kavcic Dep. 810:4-8



Ex. 47

Marvell is Not Entitled to a Presumption of Laches

Marvell ignores the evidence that CMU did not and could not have known of Marvell's infringement in May 2001

Letter to Seagate

Data Storage Systems Center

Robert M White
Director
Data Storage Systems Center
University Professor
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, PA 15213-3890

Telephone: 412-268-6916
Fax: 412-268-4585
E-mail: white@ece.cmu.edu

DSSC # 4500–0

May 17, 2001

May 17, 2001

Mark H. Kryder

presence of [illegible] scheme, which I have [illegible] on magnetic recording. For this to happen, the major drive manufacturers must adopt it. We would appreciate your bringing this to the attention of those within Seagate who [illegible] strategics.

Sincerely,

Robert M. White

RMW/tr

Enclosure

DX-182

Letter to IBM

Data Storage Systems Center

Robert M White
Director
Data Storage Systems Center
University Professor
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, PA 15213-3890

Telephone: 412-268-6916
Fax: 412-268-4585
E-mail: white@ece.cmu.edu

DSSC # 4505–0

May 30, 2001

May 30, 2001

Thomas Albrecht
Manager, Mechanics and Integration
[illegible]nter, MS K62-63

[illegible]ing to inform you that the DSSC (actually CMU) has been assigned a patent on an invention by Alek Kavcic and José Moura dealing with a new scheme for detecting signals in the presence of correlated noise. IBM is eligible for a royalty free license to this invention. Alek and José feel that this detection scheme offers advantages [illegible] and we would like to urge IBM to [illegible]

Enclosures: 2

DX-185

For this to happen, the major drive manufacturers must adopt it.

Alek and José feel that this detection scheme offers advantages over current detection schemes and we would like to urge IBM to consider adopting this approach.