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January 3, 2007

**VIA FACSIMILE and
ELECTRONICALLY FILED**

Honorable William B. Shubb
United States District Court Judge
501 I Street
Sacramento, CA 95814

RE: U.S. v. Mohsen, CR 03-0095 WBS

Your Honor:

We write in response to the January 3, 2007 letter to the Court from attorneys Dennis Riordan and Marc Zilversmit, who now represents Amr Mohsen in this case. We make the following observations for the Court's consideration.

First, at the December 8, 2006 hearing, the Court agreed to continue Mohsen's sentencing for a very limited evidentiary hearing requested by Mr. Balazs. At that time, Mr. Balazs argued that the Court should not accept the damage calculations from Aptix's previously retained expert, Michael Wagner, because the report prepared for Aptix and produced to QuickTurn in the patent litigation was "intended to be a sky-high starting point for settlement negotiations—not a final damage calculation." See 12/01/06 Def. Sentencing Memo, pg. 10. Mr. Balazs requested the evidentiary hearing to allow the defense to present evidence from a defense-retained expert, Ken Serwin, to contest the 9.6% royalty rate used in the Wagner report. Mr. Balazs also requested an opportunity to cross-examine QuickTurn's attorney, Jeffrey Miller, concerning (1) whether QuickTurn had an expert damage report prepared in the patent litigation; and (2) when QuickTurn had notice of Aptix's claim of infringement of the 069 patent. We further note that the intended scope of the evidentiary hearing requested by the defense was specifically delineated at pages 11-12 of Mohsen's December 1, 2006 sentencing memorandum. Mohsen's new attorneys have apparently now abandoned the previous defense request to present testimony from Ken Serwin and to question Mr. Miller. Thus, the only remaining issue to be resolved at the January 5, 2007 evidentiary hearing is the damage calculations prepared by Michael Wagner for Aptix in the civil patent case. Accordingly, the government respectfully advises the Court and defense counsel that the government will call Michael Wagner to testify at the evidentiary hearing concerning the damages report Mr. Wagner prepared for Aptix and which was produced by Aptix to QuickTurn in the underlying civil patent case.

Second, at the December 8, 2006 hearing, neither party requested leave to file additional

or supplemental sentencing memoranda and/or declarations. The evidentiary hearing was specifically limited to the narrow areas identified at pages 11-12 of the December 1, 2006 sentencing memorandum filed by Mr. Balazs. Accordingly, the government respectfully submits that new counsel has attempted to improperly expand the scope of the Court's inquiry by the filing of a declaration from Alan MacPherson. We note that the only issue the Court has left to resolve—now that the defense has abandoned its request to question attorney Jeffrey Miller—is whether the Michael Wagner report supports the government's burden of proving that Mohsen intended a loss of approximately \$24 million which Mohsen then sought to treble in the civil case. The government will present testimony from Michael Wagner on this issue. Mr. MacPherson's declaration has no bearing on whether Mohsen intended the Wagner report to serve as his basis for recovering damages from QuickTurn which was and is the ostensible purpose of the evidentiary hearing. Thus, we respectfully submit that there is no basis for the Court to hear testimony from Alan MacPherson at the evidentiary hearing or to consider Mr. MacPherson's declaration on the issue of the amount Mohsen intended QuickTurn to lose in the civil patent case.

Very truly yours,

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cc. Marc Zilversmit, Esq. (via fax)


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