

Exhibit A2: A partial list of RICO Predicate Acts by IBM, SAP, JPMorgan and additional background

Plaintiff Dr. Lakshmi Arunachalam's U.S. Patent No. 7,340,506/US 7,340,506 C1 ("506 patent"), with a priority date of November 13, 1995, re-emerged successfully against Microsoft from an *inter-partes* re-examination by the USPTO. Judge Alsup ruled (Exh. A) against Microsoft, in Dr. Arunachalam's favor in Case No. C 08-05149 WHA (N. Dt. CA) on 2/17/09: "Microsoft is using counterfeit logic to manufacture a controversy where none exists."

35 U.S.C § 282 of the Patent Act allows the presumption of validity of her '506 patent. Defendant JPMorgan Chase & Co. did not provide clear and convincing evidence of invalidity of her patents, U.S. patent No. 5,987,500 ('500 patent), 8,037,158 ('158 patent) and 8,108,492 ('492 patent) in Case 1:12-cv-282 (D. Del) with completely different claims and specifications, different from the specification and claims of the '506 patent. SAP, Citizen's Financial Group, CitiBank, Wells Fargo Bank, JPMorgan Chase and Company and Kronos have not provided clear and convincing evidence of invalidity of the '506 patent.

A. SAP, Citizen's Financial Group, CitiBank, Wells Fargo Bank, JPMorgan Chase and Company and Kronos' (collectively "Delaware Defendants") arguments in 1:12-cv-355 (D. Del) are irrelevant to the facts of the '506 patent and contrary to April 5, 2016 Federal Circuit ("CAFC") Ruling (Exh. B) in Case 14-1562, *Cardpool, Inc. v. Plastic Jungle, Inc.* that "axed patent claims do not doom amended ones."

CAFC held that the validity of the new claims was not examined by any Court and that the district court's prior invalidity decision on *Cardpool Inc.*'s patent 7,494,048 was based on the prior set of claims and had no effect on the new claims granted upon reexamination:

"district court's final judgment as to an original group of claims does not automatically render that judgment res judicata as to new claims granted upon reexamination."

"...*Fresenius USA, Inc. v. Baxter Int'l, Inc.*, 721 F.3d 1330, 1346 (Fed. Cir. 2013)... CAFC held..."the statute requires that a final PTO decision affirmed by this court be given effect in pending infringement cases that are not yet final, and is not affected by a subsequent final court ruling contrary to the PTO ruling. *Cardpool* Dist. Dk. 93 at 1-2 (May 29, 2014)."... PTO's issuance of the Reexamination Certificate was an

interpretation or application of federal law, and must be given retroactive effect because the infringement suit was still pending on appeal. Cardpool argues that the district court erred in law, because “the controlling interpretation of federal law must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.” *Id.* (quoting *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 97 (1993)). CAFC “requires that this principle “applies with equal force where the change is made by an administrative agency acting pursuant to legislative authorization.” *Thorpe v. Hous. Auth.*, 393 U.S. 268, 282 (1969).” “Cardpool also criticizes the district court for “fail[ing] to consider the case under the reexamined claims.” Cardpool Br. 21. Cardpool states that the district court “committed legal error in not giving full effect to the reexamined amended claims...and by denying the motion to vacate without reconsideration of the basis in view of the amended reexamined claims.” *Id.* at 22.” “Cardpool...stated that “if the Court is inclined to apply its prior invalidity decision to the amended reexamined claims..., such a determination must not be done in a cursory manner but with a full opportunity of the parties to provide briefing and argument.”” *Cardpool* Dist. Dk. 93 at 5-6 (May 29, 2014).”

The validity and infringement of the re-examined claims in the ‘506 patent have not been evaluated by any court. The Delaware district court’s initial unpatentability ruling in another case involving a completely different set of patents and different claims do not apply on the facts involving the ‘506 patent with new amended claims, because the claims that were the subject of the prior ruling on a different set of patents were different and do not exist “in the same form.”

The “final PTO judgment” on reexamination of the ‘506 patent was issued before “the appellate mandate (**Exh. C**) that would have finalized the interim district court decision” on the ‘492, ‘500 and ‘158 patents, issued on July 24, 2015 in CAFC Case No. 14-1495, *JPMorgan*, a year after the PTO issued the ‘506 reexamination certificate. See **Exhs. D and E** - CAFC and U.S. Supreme Court Denial of Rehearing. There is no inequitable conduct or any non-disclosure, as alleged by Delaware Defendants, on the part of Dr. Arunachalam or her attorney Lawrence Goodwin, who is a highly experienced patent lawyer. This Court must grant Dr. Arunachalam her due process right to demonstrate that new and amended claims differ substantially from the claims already rejected by the Court in another case involving different patents. The district court’s decision was not final nor was it affirmed on appeal before the PTO’s reexamination

decision. The District Court's decision was not affirmed by the CAFC, which dismissed the case without adjudicating on the merits of the case. The district court's original decision is limited to the claims and grounds that existed in that case related to the '500, '492 and '158 patents-in-suit, not on the '506 patent. CAFC cites "*Allard v. DeLorean*, 884 F.2d464, 466 (9th Cir. 1989)."

B. Courts must examine changed factual circumstances: On 4/5/16, CAFC stated in 14-1562:

"Dismissal "with prejudice" operates as res judicata as to the same cause of action. 747 Am. Jur. 2d Judgments § 547. How this rule of finality would apply to changed circumstances depends on the factual circumstances of the specific situation. See *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 327–328 (1955) ("That both suits involved 'essentially the same course of wrongful conduct' is not decisive" of the applicability of the doctrine of res judicata and courts must examine factual circumstances, such as, for example, whether "new causes of action" or "substantial changes in scope" of wrongful conduct exist, in determining its applicability.) Res judicata does not automatically arise against unknown future situations. In *Aspex*, the court applied these principles to the facts of that case, recognizing...If the claim did not exist at the time of the earlier action, it could not have been asserted in that action and is not barred by res judicata." 672 F.3d at 1342; *see also Lawlor*, 349 U.S. at 328 (a prior judgment "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case"). On the facts and procedures of this case, the issue of validity of the reexamined claims remains to be addressed in any future proceeding. In the initial proceeding the original claims were adjudicated only on grounds of subject matter eligibility under section 101. As in *Aspex*, the effect of a prior judgment rendered on specific issues as applied to the original claims, depends on the facts and issues of the reexamination, and invokes equity as well as law. 672 F.3d at 1341–1346."

"A district court's denial of a motion to vacate its judgment, Fed. R. Civ. P. 60(b), is reviewed on the procedural standards of the regional circuit, while any aspects of the motion that are unique to patent law are reviewed in accordance with Federal Circuit law.*Univ. of W. Va. Bd. of Trs. v. VanVoorhies*, 342 F.3d 1290, 1294 (Fed. Cir. 2003); *Lazare Kaplan International, Inc. v. Photocopy Technologies, Inc.*, 714 F.3d 1289 (Fed. Cir. 2013)...a district court's denial of a Rule 60(b) motion is reviewed for abuse of discretion. *United States v. Asarco Inc.*, 430 F.3d 972, 978 (9th Cir. 2005). In reviewing discretionary rulings, the Ninth Circuit determines whether the district court applied an incorrect legal rule or whether the district court's application of the law to the facts was "illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (*en banc*)...(quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 577 (1985)). The Supreme Court counsels that "vacatur must be decreed for those judgments whose review is . . . 'prevented through happenstance"—that is to say, where a controversy presented for review has 'become moot due to circumstances

unattributable to any of the parties.” *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 23 (1994) (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950)). ...remand so the district court can decide whether to vacate its judgment in light of ‘the consequences and attendant hardships of dismissal or refusal to dismiss’ and ‘the competing values of finality of judgment and right to relitigation of unreviewed disputes.’” *Dilley v. Gunn*, 64 F.3d 1365, 1370–71 (9th Cir. 1995) (quoting *Ringsby Truck Lines, Inc. v. W. Conference of Teamsters*, 686 F.2d 720, 722 (9th Cir. 1982), and stating that “*Ringsby* is wholly consistent with the ‘equitable tradition of vacatur’ reflected in *U.S. Bancorp.*”).” (Emphasis added)

C. The ‘506 patent is a completely different patent with a completely different specification and totally different claims (Exh. F) from the patents-in-suit previously asserted. A claim term cannot be construed stripped from the context of the total claim.

The claim term in the ‘506 patent, “value-added service network,” is definite because the boundaries of the patent protection sought are clear. Older cases should be applied with care, according to the facts of each case. Prosecution history estoppel and disclaimer prevent the Court from ruling several terms indefinite, such as “value-added service network,” “service network,” “value-added network switch.” The District Courts’ and CAFC’s errors were prejudicial. The Court must analyze claim terms in view of the specification from the perspective of those skilled in the relevant art since a particular term used in one patent or application may not have the same meaning when used in a different application. *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1318, 74 USPQ2d 1184, 1188 (Fed. Cir. 2005). “Value-added service network” is a term coined by the inventor, Dr. Arunachalam and can only take on that meaning ascribed to it by the inventor. The PTAB interpreted this claim term. Definiteness of claim language must be analyzed, not in a vacuum, but in light of the content of the particular application disclosure; the teachings of the prior art; and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. In reviewing a claim for compliance with 35 U.S.C. 112(b), the Court must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and,

therefore, serves the notice function required by 35 U.S.C. 112(b), by providing clear warning to others as to what constitutes infringement of the patent. See *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000); *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) (The preamble of the Larsen claim recited only a hanger and a loop but the body of the claim positively recited a linear member. The court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor's contribution to the art. Upon review of the claim in its entirety, the court concluded that the claim at issue apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112.) Examples of claim language which have been held to be indefinite set forth in MPEP § 2173.05(d) are fact specific and should not be applied as per se rules. CAFC provides guidance (emphasis added):

“The Federal Circuit’s decision in *Powell v. Home Depot*, App. No. 2010-1309 (Fed. Cir. Nov 14, 2011)... reminds one “the prior art cited in the prosecution history of a patent forms part of the intrinsic evidence for claim construction purposes,” *Kumar v. Ovonix Battery Co.*, 351 F.3d 1364, 1368 (Fed. Cir. 2003) (citing *Tate Access Floors, Inc. v. Interface Architectural Res., Inc.*, 279 F.3d 1357, 1371-72 n.4 (Fed. Cir. 2002); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).”

“In a six-four *en banc* decision in *Lighting Ballast Control LLC v. Philips Electronics North Am. Corp.*, the Federal Circuit confirmed its practice of *de novo* claim construction review. Judge Newman stated: “Implementing the Supreme Court’s decision in *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996) (*Markman II*), *aff’g Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (*en banc*) (*Markman I*), this court in *Cybor* held that patent claim construction receives *de novo* determination on appeal, that is, review for correctness as a matter of law. Such review is conducted on the administrative record and any additional information in the record of the district court, and is determined without deference to the ruling of the district court.” “Given the Supreme Court guidance in *Markman II* that claim construction is “better suited to determination by a judge rather than a jury,” Judge Newman saw three options for the appropriate standard of review:

“The first, urged by Lighting Ballast, holds that “patent claim construction is most reasonably classified as a question of fact” and so should be reviewed only for clear error. The second, supported by the Solicitor General for the United States, holds that claim construction should be subject to a “hybrid of *de novo* review and deferential review,” with “the factual aspects of claim construction to be reviewed on the clearly erroneous standard, while the final conclusion receives review as a matter of law.” The

third is that *Cybor* is a “reasonable and correct” interpretation of *Markman II*, such that the practice of *de novo* claim construction review should be maintained.”

“Judge Lourie’s Concurrence... “It would hardly promote uniformity ... for us to bless a claim construction in one district court, based on that court’s judging the credibility and demeanor of the expert witnesses in one case, when a different case might lead to a different result based on a different district judge’s appraisal of different witnesses.

[C]laim construction is not a process that normally involves historical facts. It primarily involves reading the patent’s written description as well as the prosecution history of the patent, and this court is quite as able to do that as any district court, sometimes better.”

Judge O’Malley cites several law review articles for the proposition that

“[p]arties do not make claim drafting decisions based on the standard of review we apply to trial court claim constructions. Nor could they, given the panel-dependent nature of our own determinations.”

“Claim construction disputes are very fact specific—patents do not follow a formulaic structure, or even contain oft repeated language. Claims are drafted, redrafted, and amended in ways intended to reflect and capture particular inventions in a particular field, to avoid very specific prior art, and to respond to the rejections of the unique patent examiner involved in the application process. It is rare that any two claims we review contain the same phrasing, and even more rare that the context in which the phrasing is used would not alter the meaning of even almost identical words.... Combining the uniqueness of each claim term to be reviewed with the variations in rationale employed by the divergent members of this court, provides little practical guidance regarding how any claim construction dispute might be resolved in this forum—and certainly not the uniform reliability of outcome with which the majority now credits our jurisprudence in this area...we know how to delve into the “very fact specific” record, to trace the prosecution history of a claim that was “drafted, redrafted, and amended,” to understand the “particular inventions” and the distinguishing features from the “very specific prior art.” It doesn’t matter that the claim construction in one case is not likely to apply to a different case involving a different patent. What matters is that the body of case law under *Cybor* has given us a framework within which to apply the principles of claim construction in a predictable manner.”

In Dr. Arunachalam’s parent 6,212,556 (‘556) patent prosecution history (Exh. G), the inventor, Dr. Arunachalam distinguished her invention over the cited art, U.S. Patent No. 5,828,666 (“Focsaneanu”). **Delaware Defendants omit** that prosecution history estoppel already has established that the term is not indefinite and relates to application layer network switches, not with a network layer switch; and that prior art is not only cited, but also discussed

in detail in the specification of the '506 patent. The claim language, disclosure in the written description, and the meaning to persons of ordinary skill are fact specific. CAFC states:

“cited art as intrinsic evidence for purposes of claim construction....claims should be construed in view of the prosecution history's treatment of the prior art so as to determine what the applicant gave up in obtaining allowance of the claims...When prior art that sheds light on the meaning of a term is cited by the patentee, it can have particular value as a guide to proper construction of the term, because it may indicate not only the meaning of the term to persons skilled in the art, but also that the patentee intended to adopt that meaning.” *Arthur A. Collins, Inc. v. Northern Telecom Ltd*, 216 F.3d 1042 (Fed. Cir. 2000).”

Delaware Defendants omit that Dr. Arunachalam's priority provisional application

S/N60/006,634 (Exh H pp. 4-5) distinguishes between a valued-added service network, from a facilities network, gives analogy with telephone service network, that physical poles and cables of a phone network is the facilities network, that the voice service network is the application network that delivers voice services, that voice is the value-added network service or VAN service.

“...Web evolving as...medium for electronic commerce (EC), new value - added network (VAN) services are expected to emerge... simple telephone call is...well - known example of a value - added network service...telephone network has two different but interrelated aspects: In terms of its physical components, it is a "facilities network." In terms of the varieties of VAN services that it provides, it is a set of many "traffic networks", each representing a particular interconnection of facilities. Traffic is the flow of multi - media information through the network...consider, for example, a simple transaction of daily commerce, such as ordering and paying for pizza, or home banking, or payroll services for businesses from banks, offered as a VAN service. The Internet, like the telecommunications network, is a system of interconnected facilities that could carry traffic from a variety of EC services. From the perspective of its physical components, the "Facilities Network" for EC exists today...There is no direct access to the end user from the VAN service providers, such as a Bank. There are some missing elements needed to capture and control the end user environment. The "Traffic Network" is THE challenge.” (Exh H pp 4-5)

Ethernet cord and OSI network layer router or switch (col. 5) are examples of a facilities network, which is a TCP/IP-based (cols. 5-6) network with physical hardware components. Example of a value-added service network over the Web is a Web banking application network.

Delaware Defendants omit that the specification (1) distinguished between the network layer vs application layer, (*see* cols. 4-5 and Fig. 3) which defines clearly the **metes and bounds** of what the structure is; (2) evidences that any ambiguity has been resolved by the specification disclosing a metric that distinguishes the value-added service network as an application network including the application displayed on a Web browser limitation and the distinction from a facilities network, which is a TCP/IP-based physical Internet or Web. *Halliburton Energy Servs.*, 514F.3d,1255-56,85USPQ2d,1663 “...quantitative metric (e.g...limitation as to a physical property) rather than a qualitative functional feature”); (3) provide[s] a formula for calculating a property “along with examples that meet the claim limitation and examples that do not;” (4) discloses a “value-added service network” which is an OSI layer 7 application network that includes an application displayed on a Web browser (**providing examples** of such a “value-added service network” **meeting the claim limitation**, eg, Web banking network, that includes a Web banking application displayed on a Web browser, Figs 6A,5D, 5C) and is distinct from a facilities network, an IP-based facilities network, which only goes up to layer 4 of the OSI model, such as the physical Internet and the Web. POSvc application is a term coined by the inventor and can only take on the meaning ascribed to it by the inventor and is not indefinite; (5) **provides examples that do not meet the claim limitation** as in cols. 5-6, of an IP-based facilities network as in col. 5, such as the Internet, Web... (*id.* 1256, 85 USPQ2d at 1663 (citing *Oakley, Inc. v. Sunglass Hut Int’l*, 316F.3d 1331,1341,65 USPQ2d1321,1326 (Fed. Cir. 2003)). “Dialing into the bank via a modem line” is an example of a facilities network;

“...user 100... **dialing into the bank via a modem line**. If user 100 is a Web user...no current mechanism for performing...real-time transaction with the bank, as illustrated in FIG. 4A ... bank...unable to be a true “Web merchant,” namely a **merchant capable of providing complete transactional services on the Web.**” (col. 5)

(6) provides a general guideline and examples sufficient to teach a person skilled in the art when the claim limitation was satisfied (see *Marosi*, 710 F.2d at 803, 218 USPQ at 292);

(7) demonstrates that the boundaries of the claim term in the claim as a whole are clear and precise, upon primary inquiry as to whether the language leaves room for ambiguity or whether the boundaries are clear and precise.

The Delaware District Court construed “VAN service provider” as a provider of a POSvc application. The Court *must* construe “value-added service network” consistent with “VAN service provider” “value-added network” and “VAN service.” PTAB *erroneously* (and frankly suspiciously given undisclosed litigant financial holdings by the judges) construed it as “a network on which services, other than underlying network communication services, are provided.” Patent Owner (“PO”) construed it as “an OSI application layer network running on top of a facilities network and that provides value-added network services (VAN services).”

Prelim. Resp. 18. “VAN Services” are “applications displayed on a Web browser, that provides a value-add to the network,” (eg, Web banking application is an example of a value-add to the network.) A “facilities network” is “an IP-based network with physical hardware components that provides underlying network communication services up to layer 4 of the OSI model.” This construction for “service network,” “Value-added Service Network” is consistent with PO’s construction of VAN service provider and also the specification. PTAB construed it similarly, distinguishing between a facilities network (which provides the underlying network services from layers 1-4 of the OSI model) and a “service network,” “Value-added Service Network” which provides the value-added services like Web banking, consistent with the specification (col.

6). PTAB acknowledges that a service network includes an Exchange which displays a Web page 505 that includes applications 510. (col. 5): “Five components interact to provide this

service network functionality, namely, exchange, ... graphical user interface." The specification discloses that a necessary component of a service network or "Value-added Service Network" is an application displayed on a Web browser and that the service network or "Value-added Service Network" is an OSI application layer network running on top of a TCP/IP-based facilities network, such as the Web, the physical Internet, or email networks, as PTAB acknowledged. (cols. 5-6) The service network or "Value-added Service Network" delivers VAN services or applications displayed on a Web browser. (col. 9). PTAB acknowledged in IPR2013-00194, IPR2013-00195, CBM2013-00013 and CBM2014-00018 that a service other than an underlying service is an application like the Bank POSvc application. PTAB itself has defined what "value-add" means, that it is a "service other than an underlying service is an application like the Bank POSvc application." PTAB acknowledged what VAN services means. VAN service is a term coined by the inventor, just as POSvc application is a term coined by the inventor and can only take on the meaning ascribed to these terms in the specification or prosecution history by the inventor. Application service 704 and VAN service 704 are one and the same as disclosed in the specification. The specification at col. 2 discloses "application" or "service." So VAN services are applications displayed on a Web page or Web browser.

D. Delaware Defendants' willful omissions, obstruction of justice, allegations about Dr. Arunachalam and her patents and terrorizing Dr. Arunachalam (Exh. K) mask racketeering evident from SAP's founding role (2001) in the IBM Eclipse Foundation, hijacking Dr. Arunachalam's inventions that created the millennial generation (Exh. J: eclipse.org, members, Eclipse code which includes said inventions)

Delaware Defendants obstructed justice involving multiple parties thus denying Dr.

Arunachalam a due process hearing, without giving a chance to be heard nor being given a fair chance and due process by the Courts, using counterfeit logic to manufacture false allegations about Dr. Arunachalam and her patents that masks violation of U.S. laws and misrepresentation

by individual lawyers, expert witnesses, judges, PTAB, enterprises and their employees, that has caused great personal and financial injury to Dr. Arunachalam.

SAP colluded with IBM to hijack and illegally distribute Dr. Arunachalam's invention to multiple IBM Eclipse Foundation members.

Dated: April 18, 2016

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lakshmi Arunachalam". The signature is fluid and cursive, with the first name "Lakshmi" and the last name "Arunachalam" clearly distinguishable.

Tel: 650 690 0995
laks22002@yahoo.com

Dr. Lakshmi Arunachalam
222 Stanford Ave, Menlo Park, CA 94025

Pro Se Plaintiff