

Clarice Thompson

From: Charles Iseman
Sent: Friday, April 02, 2004 6:45 PM
To: Clarice Thompson
Subject: FW: MDS America (WC2XPU) and Northpoint Application for Review



DSARESP.pdf (92 KB)

Clarice, please scan this e-mail and the attachment into the ELS for Station WC2XPU (both file nos. for the ML and the RR). Thanks, Charles

-----Original Message-----

From: Stockman, Jeanne [mailto:JWStockman@SWIDLAW.com]

Sent: Fri 4/2/2004 6:35 PM

To: Charles Iseman

Cc: James Burtle; Douglas Young; Ira Keltz; John Branscome; Margaret Wiener; jrozendaal@khhte.com; Gagnier, Paul

Subject: MDS America (WC2XPU) and Northpoint Application for Review

On behalf of MDSA, attached please find a supplement to MDSA's March 26, 2004 response to your March 19, 2004 inquiry (reproduced below) regarding the status of the MDSA-Northpoint patent litigation, Northpoint Technology, Ltd. v. MDS America, Inc., Case No. 01-14207-CIV-COHN. This submission was filed earlier today via ECFS.

Should you have any questions concerning this matter, please contact Paul Gagnier at 202-424-7592 (email pogagnier@swidlaw.com) or myself at 202-295-8392 (email jwstockman@swidlaw.com).

Regards,
Jeanne Stockman

<<MDSARESP.pdf>>

The preceding E-mail message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at (202) 295-8392. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

Jeanne W. Stockman, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 295-8392/phone
(202) 424-7643/fax
jwstockman@swidlaw.com

-----Original Message-----

From: Charles Iseman [mailto:Charles.Iseman@fcc.gov]

Sent: Friday, March 19, 2004 4:03 PM

To: jrozendaal@khhte.com; Stockman, Jeanne; Disenhaus, Helen

Cc: James Burtle; doug.young@fcc.gov; Ira Keltz

Subject: MDS America (WC2XPU) and Northpoint Application for Review

Counsel:

Based on the ex parte letter submitted in ET Docket No. 98-206 on Nov. 7, 2003 by counsel for MDS America, it appears that on Nov. 5, 2003 a jury verdict was rendered in favor of MDS America and adverse to the patent claims of Northpoint in Northpoint Technology, Ltd. v. MDS America, Inc., Case No. 01-14207-CIV-COHN (So. D. Fla., W. Palm Beach Div., filed Jul. 18, 2001). Counsel is hereby requested to supplement the record by documenting the court's verdict (such as may be obtained through the PACER system), submitting a copy of all relevant subsequent rulings of the court, and by setting forth the status of the litigation (e.g., finally adjudged, appeal pending, etc.). All such supplementation should be submitted by c.o.b. Friday, March 26, 2004.

Charles J. Iseman
Deputy Chief
Electromagnetic Compatibility Division
Office of Engineering and Technology
Federal Communications Commission

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

April 2, 2004

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

**Re: *Ex Parte* Submission of MDS America, Incorporated
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:

We file this letter on behalf of MDS America, Incorporated ("MDSA") to supplement MDSA's letter of March 26, 2003 and the letter of Northpoint Technology, Ltd. ("Northpoint") of that same date regarding the status of the patent litigation case, *Northpoint Technology, Ltd., v. MDS America, Inc. and MDS International, S.A.R.L.*, Case No. 01-14207-CIV-COHN (S.D. Fla.). Northpoint's letter stated that it "writes separately [from MDSA] to emphasize the narrowness of the jury's verdict, which affects only three of the 35 claims of the two patents in suit."

MDSA strongly disagrees with Northpoint's improper narrowing of the scope of the verdict with respect to the Northpoint patents at issue – Patent Nos. 5,761,605 and 6,169,878 (the "Patents"). While this Commission is not the proper forum to provide a detailed rebuttal to Northpoint's letter, Northpoint's mischaracterizations must be corrected.

In the litigation, Northpoint elected to prosecute its patent infringement claims by presenting three claims that it characterized as "representative" of all of its claims. In so doing, Northpoint chose not to separately put its other 32 claims before the jury. Northpoint and the District Court recognized that the validity of the Patents would stand or fall based on the three representative claims presented by Northpoint. Consequently, the jury's verdict resulted in all claims under the Patents being deemed invalid. Northpoint's attempt to back away from the decision it made at trial is troubling and its assertions that its other claims survive is simply erroneous.

This letter is being filed electronically. If there are any questions concerning this matter, please contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul O. Gagnier". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul O. Gagnier
Jeanne W. Stockman

Counsel for MDS America, Incorporated

cc: Kirk Kirkpatrick

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2004, a true and correct copy of the foregoing was served via e-mail (denoted by *) and first class mail, on the following individuals:

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

Mr. James L. Burtie*
Chief, Experimental Licensing Branch
Division of Electromagnetic Compatibility
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Margaret Wiener, Chief*
Auctions & Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

J.C. Rozendaal*
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

John Branscome*
Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Gary M. Epstein
James H. Barker
Counsel for DIRECTV, Inc.
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004

Pantelis Michalopoulos
Steven Reed
Counsel for EchoStar Satellite Corporation
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Antoinette Cook Bush
Northpoint Technology, Ltd.
444 North Capitol Street, N.W.
Suite 645
Washington, D.C. 20001

