

DONGXIAO YUE
2777 ALVARADO ST., SUITE C
SAN LEANDRO, CA 94577

Telephone: [REDACTED]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re DONGXIAO YUE
Petitioner,

v.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA
Respondent.

Real Parties in Interest: Storage Technology Corporation,
Sun Microsystems, Inc., EMC Corporation, Darden
Restaurants Inc., IBM Corporation., defendants; Netbula,
LLC, plaintiff.

Case No. 07-74701

**EXHIBITS TO DONGXIAO
YUE'S REPLY BRIEF IN
SUPPORT OF
EMERGENCY MOTION**

(Exhibits and page numbering
continues from the appendix to
the Petition for Writ of
Mandamus)

EXHIBIT	DESCRIPTION	PAGE
9	Excerpts of November 20, 2007 hearing transcripts	A47
10	Letter to Honorable Judge Jenkins on SUN's motion to relate the <i>Yue v. Storage Technology</i> case (C07-05850-SI) to the <i>Netbula v. Storage Technology</i> case (C06-07391-MJJ)	A56
11	Page 55 from the Breyer Committee Report	A60
12	Pages from Netbula's Motion for Reconsideration on the summary judgment ruling in the BindView case.	A62
13	BindView case docket showing Yue's Opposition to SUN's motion to intervene and modify BindView protective order	A67

EXHIBIT 9

EXHIBIT 9

1 LET ME JUST ASK A FEW QUESTIONS ON THE SUBSTITUTION
2 MOTION, BECAUSE THERE IS SOME AMBIGUITY IN THESE PLEADINGS.
3 AND I WILL ALSO SAY MR. YUE DOES NOT PRESENTLY HAVE ANY RIGHT
4 TO FILE ANYTHING BEFORE THE COURT. YOU DON'T.

5 ARE YOU MR. YUE?

6 **MR. YUE:** YES.

7 **THE COURT:** SO YOU DON'T. YOU DON'T. UNLESS AND
8 UNTIL THE COURT WOULD GRANT YOU THAT AUTHORITY, YOU DON'T. SO
9 YOU SHOULD CEASE AND DESIST FROM DOING SUCH, NOTWITHSTANDING
10 THE FACT -- LISTEN AND HEAR ME CLEARLY. YOU SHOULD CEASE AND
11 DESIST FROM DOING SUCH UNTIL YOU ARE AUTHORIZED TO DO SO. ALL
12 RIGHT? I JUST -- THERE'S NO ARGUMENT ABOUT THAT.

13 AND EVEN IF I WERE TO GRANT THIS MOTION, IT STILL
14 WOULD NOT GIVE YOU AUTHORITY TO DO SO, TO FILE PLEADINGS IN THE
15 MATTER. SO THE ISSUE OF REPRESENTATION HAS AT LEAST BEEN
16 SETTLED UNTIL COURT HEARS THE DISPOSITIVE MOTION NEXT WEEK.
17 YOU WILL REMAIN.

18 **MR. YUE:** WHAT'S THE COURT'S LEGAL RATIONALE FOR
19 THAT?

20 **THE COURT:** THAT IS THE RATIONALE, AND THAT'S THE
21 STATEMENT.

22 **MR. YUE:** FOLLOWING RULES OF CIVIL PROCEDURE --

23 **THE COURT:** MR. YUE, I AM GOING TO HAVE YOU TAKEN
24 OUT IF YOU DON'T BE QUIET. YOU HAVE NO STANDING AT THIS
25 JUNCTURE TO MAKE ARGUMENTS TO THE COURT. YOU MAY AT SOME LATER

1 I'M SORRY -- THE ONLY DIRECTOR OF NETBULA, HE TRANSFERRED
2 INTEREST FROM NET, LLC TO HIMSELF.

3 **THE COURT:** AND THAT ACCOMPLISHES WHAT?

4 **MS. BRILLET:** WELL, FOR ONE, SINCE IT WOULD HAVE
5 BEEN AN ISSUE --

6 **THE COURT:** SINCE HE IS NETBULA, NETBULA IS NOT
7 GOING OUT OF EXISTENCE, IS IT?

8 **MS. BRILLET:** NO, IT IS NOT.

9 BUT, ONE, HE DOES WANT TO -- HE DOES WANT TO APPEAR
10 PRO SE, ALTHOUGH THAT IS NOT THE PRIMARY REASON FOR DOING THIS.
11 TWO, IT WOULD STREAMLINE THE PROCESS, AS WE DID STATE IN OUR
12 PAPERS --

13 **THE COURT:** HE WANTS TO FILE A MOTION TO AMEND,
14 RIGHT.

15 **MS. BRILLET:** IT'S NOT TO FILE A MOTION, IT'S JUST
16 TO SUBSTITUTE HIM IN AS A PARTY.

17 **THE COURT:** DOWNSTREAM HE WANTS TO FILE A MOTION TO
18 AMEND.

19 **MS. BRILLET:** THAT IS NOT --

20 **THE COURT:** THAT'S WHAT I SAW IN THE PAPER.

21 **MS. BRILLET:** OKAY.

22 **THE COURT:** HOW DOES THAT STREAMLINE THE LITIGATION?

23 **MS. BRILLET:** BECAUSE OF THE FACT THAT THERE ARE TWO
24 PORTIONS OF THE CODE THAT HAVE BEEN INVOLVED. ONE SET IS THE
25 SET THAT WAS CREATED PRIOR TO THE ADVENT OF NETBULA, AND THE

1 OTHER SET IS AFTER. SO BY MAKING HIM A PARTY IN THIS ACTION
2 NOW, THERE WOULD JUST BE ONE OWNER.

3 **THE COURT:** IT'S A BIT OF A SHELL GAME, ISN'T IT?
4 ISN'T THAT WHAT IT IS? THEY ARE ONE IN THE SAME. THEY ARE ONE
5 IN THE SAME, SO IT DOES NOT -- THAT ASSIGNMENT DOES NOTHING TO
6 ADVANCE THE CONDUCT OF THIS LITIGATION SINCE THEY'RE ONE IN THE
7 SAME.

8 WHAT IT ACTUALLY -- AND THEY'RE NOT MAKING,
9 ASSERTING -- THEY MAY HAVE WITH RESPECT TO THE WAY MR. YUE
10 PARTICIPATES IN THE CONDUCT OF THE LITIGATION AS TO WHETHER HE
11 REPRESENTS HIMSELF OR NOT, BUT THEY'RE NOT ATTACKING NETBULA'S
12 OWNERSHIP OF THIS COPYRIGHT INTEREST IN A WAY THAT SUPPORTS HIS
13 SUBSTITUTION IN AS A PARTY. THE ONLY THING THAT'S ACCOMPLISHED
14 THERE IS THAT HE GETS TO STAND BEFORE THE COURT AND MAKES
15 ARGUMENTS.

16 **MS. BRILLET:** WHICH IS WHAT DR. YUE WOULD LIKE TO
17 DO.

18 **THE COURT:** RIGHT. THERE'S VERY CLEAR CASE LAW THAT
19 SAYS THAT'S NOT A BASIS TO SUBSTITUTE A PARTY BECAUSE IT
20 DOESN'T FACILITATE THE CONDUCT OF THE LITIGATION.

21 **MS. BRILLET:** WELL, FOR ONE, THE DEFENDANTS HAVE
22 ALREADY SUED DR. YUE IN HIS INDIVIDUAL CAPACITY, SO THERE WOULD
23 BE NO PREJUDICE IN THAT STREAM. BECAUSE OF THE FACT THAT HE'S
24 ALREADY AN INDIVIDUAL PARTY, THEY'VE ALREADY ACCEPTED HIM AS AN
25 INDIVIDUAL.

1 OTHER BUSINESS ENTITIES NEED TO APPEAR THROUGH COUNSEL, AND
2 WHERE IT'S THE RIGHT THAT NETBULA OWNED WHICH HAS BEEN
3 TRANSFERRED FOR NO OTHER REASON OTHER THAN TO GET IT OUT OF THE
4 CORPORATION --

5 **THE COURT:** BUT YOU DON'T ARGUE THAT THE ASSIGNMENT
6 IS NOT VALID, RIGHT?

7 **MR. PULGRAM:** EXCUSE ME?

8 **THE COURT:** YOU DON'T ARGUE THE ASSIGNMENT IS NOT
9 VALID?

10 **MR. PULGRAM:** THERE IS SOME LAW TO THAT EFFECT, YOUR
11 HONOR.

12 **THE COURT:** BUT IT'S NOT BEFORE ME. I HAVEN'T SEEN
13 THAT IN YOUR PAPERS.

14 **MR. PULGRAM:** I BELIEVE THERE'S A PARAGRAPH, THE
15 LAST PARAGRAPH OF OUR ARGUMENT. BUT I DON'T THINK YOU HAVE TO
16 REACH THAT.

17 **THE COURT:** THAT'S WHAT I AM SUGGESTING TO YOU. SO
18 TO DENY THE MOTION MEANS THAT HE'S NOT SUBSTITUTED IN AS A
19 PARTY?

20 **MR. PULGRAM:** CORRECT.

21 **THE COURT:** AND THINGS REMAIN STATUS QUO WITH
22 RESPECT TO THE MOTIONS THAT WOULD BE HEARD IN DECEMBER.

23 **MR. PULGRAM:** EXACTLY RIGHT.

24 **THE COURT:** WE TAKE THAT ISSUE UP POST WHAT
25 TRANSPIRES WITH THOSE MOTIONS.

1 **MR. PULGRAM:** I BELIEVE THAT IS CORRECT, YOUR HONOR.
2 WE COULD DO THAT.

3 AND I THINK THAT THERE IS NO REASON AT THIS POINT,
4 THERE'S NOTHING TO BE GAINED OR ADDED BY HAVING A LAYPERSON
5 STAND UP TO ARGUE NETBULA'S RIGHTS.

6 **THE COURT:** AND THE DETERMINATION OF THE MOTION
7 BINDING UPON NETBULA IS BINDING UPON NOW THE ASSIGNEE TO THAT
8 COPYRIGHT.

9 **MR. PULGRAM:** WELL, THAT'S WHAT HE DOES WHEN HE
10 ASSIGNS THINGS TO HIMSELF. THE DETERMINATIONS FOR A LITIGANT
11 RUN DOWNSTREAM TO ITS ASSIGNEES.

12 **THE COURT:** ANYTHING ELSE?

13 **MS. BRILLET:** YOUR HONOR, MR. YUE IS NOT TRYING TO
14 ASSERT THE RIGHTS OF NETBULA.

15 **THE COURT:** I RECOGNIZE THAT.

16 **MS. BRILLET:** NOW THE ASSIGNMENT IS HIS. IT IS HIS
17 RIGHTS, AND THEY HAVE SUED HIM IN HIS INDIVIDUAL CAPACITY
18 ALREADY, SO THEY HAVE ACCEPTED HIM AS AN INDIVIDUAL PARTY.

19 **THE COURT:** RIGHT, RIGHT.

20 WELL, HERE IS MY VIEW: THIS IS NOT -- IT'S NOT
21 DISPARAGING TO DR. YUE. HE WANTS TO REPRESENT HIMSELF IN THIS
22 MATTER, AND THAT'S CLEAR, AND THE RECORD IS ABUNDANTLY CLEAR.
23 THE INFERENCES ARE EXTREMELY STRONG THAT THE ASSIGNMENT WAS
24 MADE IN VIEW TOWARD BEING ABLE TO APPEAR BEFORE THE COURT AND
25 ASSERT NOW THE ASSIGNED INTERESTS IN THE COPYRIGHT THAT IS THE

1 SUBJECT OF THIS LITIGATION.

2 THE PROBLEM WITHIN THE EXERCISE OF DISCRETION IS IT
3 COMES ON THE HEELS AND AT A TIME WHEN THE COURT IS ABOUT TO
4 ADJUDICATE DISPOSITIVE MOTIONS THAT WERE SET DOWN IN MAY OF
5 2007, AND THERE HAS BEEN NO INTERVENING CHANGE WITH RESPECT TO
6 THE COPYRIGHT AT ISSUE IN THIS LITIGATION. I HAVE VERIFIED
7 THAT THROUGH COUNSEL.

8 SO THE COURT DOES NOT SEE, AND IT CANNOT BE
9 ESTABLISHED HOW SUBSTITUTING DR. YUE IN AS A PARTY PLAINTIFF OR
10 AS A PARTY AT THIS JUNCTURE IN THE PENDENCY OF THE MOTIONS
11 FACILITATES THE CONDUCT OF THE LITIGATION WHATSOEVER. I WILL
12 DENY THE MOTION TO SUBSTITUTE IN FOR THESE REASONS WITHOUT
13 PREJUDICE TO REHEARING IT AT A TIME WHEN THE DISPOSITIVE MOTION
14 IS RESOLVED, BECAUSE THAT WILL NOT RESOLVE THE CASE IN ITS
15 ENTIRETY IN ANY EVENT. SO I DENY MOTION FOR SUBSTITUTION FOR
16 THE REASONS THAT I INDICATED ON THE RECORD HERE, AND WE'LL PUT
17 SOMETHING IN WRITING IN THE RECORD ON THAT MATTER.

18 NOW, I ALSO WANT THE RECORD TO REFLECT THE
19 STIPULATION AND AGREEMENT THAT THE REGISTRATION EFFECTIVE DATE
20 OF 10/18/05 NAMING THE AUTHOR OF THE COPYRIGHT THAT'S
21 REGISTERED HERE AT ISSUE IS NETBULA. THAT'S A DIFFERENT
22 QUESTION FROM THE VALIDITY OF THE ASSIGNMENT WHICH I MAKE NO
23 FINDING WITH RESPECT TO. OKAY.

24 MR. YUE: YOUR HONOR, MAY I HAVE A WORD ON THE
25 FACTS?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: NO. YOU CAN TALK WITH YOUR CLIENT, BUT YOU CAN'T TALK TO ME -- YOU CAN TALK WITH YOUR ATTORNEY BUT YOU CAN'T TALK TO ME. OKAY. ALL RIGHT.

NOW LET'S MOVE TO THE REQUEST FOR INTERVENTION.

(PROCEEDINGS ADJOURNED.)

1 **THE COURT:** OKAY. AND YOU OUGHT TO ALSO INCLUDE IN
2 THE ORDER THE EXTENSION OF THE 60-DAY TIMEFRAME.

3 **MR. PULGRAM:** WE WILL, YOUR HONOR. THANK YOU.

4 **MR. YUE:** YOUR HONOR, MAY I, FOR THE RECORD? AM I
5 UNDERSTANDING CORRECTLY THAT MY MOTION TO INTERVENE AND --

6 **THE COURT:** NOT ON TODAY.

7 **MR. YUE:** -- HOLDING COUNSEL IN CONTEMPT --

8 **THE COURT:** LET ME SUGGEST, IT'S NOT ON TODAY
9 BECAUSE YOU CAN'T MAKE SUCH A MOTION YET. SO IT'S NOT ON
10 TODAY.

11 **MR. YUE:** I WAS MOVING AS A THIRD PARTY, JUST AS SUN
12 DEFENSE COUNSEL.

13 **THE COURT:** RIGHT.

14 **MR. YUE:** BUT I WAS A PRO SE.

15 **THE COURT:** IT WASN'T ON TODAY.

16 **MR. YUE:** WAS THE REASON VACATING MY MOTION BECAUSE
17 I AM A PRO SE LITIGANT?

18 **THE COURT:** NO, IT JUST WASN'T -- IT DIDN'T HIT MY
19 CALENDAR TODAY. THAT'S IT. ALL RIGHT. TAKE CARE, MR. YUE.

20 **MR. YUE:** OKAY. THANK YOU, YOUR HONOR.

21 (PROCEEDINGS ADJOURNED.)
22
23
24
25

EXHIBIT 10

EXHIBIT 10

2777 Alvarado Street
Suite C
San Leandro, CA 94577

December 6, 2007

Honorable Martin J. Jenkins
U.S. District Court, Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: SUN's administrative motion to relate cases (C06-07391, C0705850)

Dear Judge Jenkins,

SUN defendants filed an administrative motion to relate the C07-05850-SI case to the C06-07391-MJI case. Since Your Honor has ordered that I cannot file anything before the Court, I am writing this letter to express my position on this issue.

During a hearing before Judge Chen in June 07, Mr. Laurence Pulgram stated that the Netbula copyright only covers the code written between July 1996 and September 1996, in support of his position that the copyright was invalid.

In July 2007, SUN's counsel, the same Fenwick lawyers, again raised the issue that I wrote large portion of code of the software in dispute before I founded Netbula. The Fenwick lawyers indicated that I am the owner of the copyrights of those codes, not Netbula.

In October 2007, I informed SUN defendants that I have to assert additional claims against them. And I sought their stipulation to allow me to substitute or join as copyright plaintiff in the C06-07391-MJJ case for judicial economy, as the alternative would be forcing me to file a separate action. Netbula and I fully informed the Court about this situation in court filings. See Document No. 91, p.4:10-18 (filed on October 30, 2007); Document No. 98, p.3:11-19 and Document No. 99, pp.4:23-5-18 (filed on November 5, 2007).

On November 19, 2007, I filed the *Yue v. Storage Technology Corporation* action, which was assigned to Honorable Judge Susan Illston with case number C07-05850-SI. The next day, November 20, 2007, the hearing for Netbula's motion to substitute me as the copyright plaintiff was held before Your Honor. The Fenwick lawyers opposed that motion vehemently. The following was an exchange at the hearing after Mr. Laurence Pulgram provided the Court the copyright registration in question in the C06-07391-MJJ case.

THE COURT: Is this the only copyright at issue –
MR. PULGRAM: Yes.

The Court also made the following statement after Netbula's counsel, Ms. Brillet, presented her argument.

Ms. Brillet: Because of the fact that there are two portions of the code that have been involved. One set is the set that was created before the advent of Netbula, and the other set is after. So by making him a party in this action now, there would just be one owner.

THE COURT: It's a bit of a shell game, isn't it? Isn't that what it is? They are one in the same... The only thing that's accomplished there is that he gets to stand before the Court and makes arguments.


Tr., Nov 20, 2007, pp.11:23-12:15.

At the hearing, the Court ordered that I cannot file anything until authorized to do so. The Court further stated that even if the Court granted the motion to substitute party, it still would not give me the right to file papers. See page 4 of the transcript (attached). The Court denied Netbula's motion to substitute or join me as a party.

Now, knowing that I cannot file anything on the C06-07391-MJJ docket, the Fenwick lawyers filed this motion to relate cases.

I request that the Court delay the consideration of SUN's motion to relate cases until my right to file documents is clarified. Once I am allowed to do so, I will file a response to SUN's motion to relate cases on the C06-07391 docket.

Sincerely,



Dongxiao Yue

cc: Honorable Judge Susan Illston
Mr. Laurence Pulgram, Mr. Jed Wakefield, Mr. David Eiseman, Ms. Vonnah Brillet.

EXHIBIT 11

EXHIBIT 11

Implementation of the Judicial Conduct and Disability Act of 1980

A Report to the Chief Justice

The Judicial Conduct and Disability Act Study Committee

Stephen Breyer, *Chair*

Associate Justice, Supreme Court of the United States

Sarah Evans Barker

U.S. District Judge, Southern District of Indiana

Pasco M. Bowman

Senior U.S. Circuit Judge, Eighth Circuit

D. Brock Hornby

U.S. District Judge, District of Maine

Sally M. Rider

Administrative Assistant to the Chief Justice

J. Harvie Wilkinson III

U.S. Circuit Judge, Fourth Circuit

September 2006

under the Act should not be dismissed merely because an appellate remedy appears to exist”

In 327 of the 593 complaints, chief judges dismissed the complaint on the ground that it was directly related to the merits of a judicial decision or procedural ruling. In 141 complaints, that was the sole ground for dismissal. We believe that three chief judge actions (2%) were problematic. We discuss two of them here and one (case A-19) in the section called “Dispositions with two problematic elements.”

A-12 Improperly finding as merits-related a complaint that a judge ordered the clerk not to accept a motion for his recusal

Facts and complaint—An individual complained that a district judge ordered the clerk not to accept papers the complainant filed in relation to a case in which he claimed that his bank records had been made available to law enforcement officials without telling him. Complainant said he tried to move to recuse the judge from the case and to seek relief from the orders affecting his bank accounts, but the clerk refused to file his motions. The complainant was not a party to the litigation.

Chief judge order—The chief judge speculated that ordering the clerk not to file papers “remains within the realm of case related decisions since it may have been made, correctly or not, in response to the sensitive posture of the proceedings and because it remains subject to normal appellate review.” The chief judge said that a not-to-file order “is reviewable through normal appellate processes such as the filing of a petition for a writ of mandamus, as is the [district judge’s] failure to disqualify himself.” He added, “I am not prepared to say that judicial misconduct would never occur if a judge has, in fact, directed a clerk not to perform the ministerial duties required in regard to filing papers.”

Assessment—An order not to accept papers for filing, issued independently of any case or controversy, might not be directly related to the merits. If so, dismissing the complaint was inconsistent with our Standard 2 (a merits-related dismissal protects “the independence of the judge in deciding Article III cases or controversies”). The chief judge’s order did not connect the rejection of papers to any order, ruling, or other judicial activity. His speculation—that directing the clerk not to perform the ministerial act of filing papers could be misconduct—appears to concede a failure to show a direct relationship to the merits of a decision or procedural ruling.

A-13 Improperly finding merits-related a complaint that a judge and defendant engaged in improper ex parte conduct

Facts and complaint—A lawyer who represented herself in a suit against her former employer alleged ex parte contact between the defendant and the judge. She said that the defendant stated in a filing that it had provided the judge a lengthy docu-

EXHIBIT 12

EXHIBIT 12

1 VONNAH M. BRILLET (SBN 226545)
LAW OFFICES OF VONNAH M. BRILLET
2 2777 Alvarado Street, Suite E
San Leandro, California 94577
3 Telephone: (510) 351-5345
Facsimile: (510) 351-5348
4 E-mail:BrilletLaw@yahoo.com

5 Attorneys for Plaintiff
6 NETBULA, LLC

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9
10 NETBULA, LLC, a Delaware limited liability
11 company,

12 Plaintiff,

13 vs.

14 BINDVIEW DEVELOPMENT
CORPORATION, a Texas Corporation,
15 SYMANTEC CORPORATION, a Delaware
Corporation, ERIC J. PULASKI, an individual,
16 and DOES 1-10, inclusive,

17 Defendants.

Case No.: C-06-0711-MJJ

**PLAINTIFF NETBULA, LLC'S MOTION
FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OR PERMISSION TO
APPEAL AND TO STAY ENTRY OF
JUDGMENT PENDING APPEAL**

Date:
Time:
Dept: Courtroom 11
Judge: The Honorable Martin J. Jenkins

1

2 **INTRODUCTION** - 4 -

3 **STATEMENT OF ISSUES** - 4 -

4 **STATEMENT OF FACTS** - 6 -

5 **ARGUMENT** - 12 -

6 **ISSUES ON CLAIMS NOT ADJUDICATED**..... - 12 -

7 **Issue 1: The allegation that BindView made unauthorized copies of the Netbula RPC SDK in developing the bv-**

8 **CIS software was not addressed by the Defendants or the Court Order** - 12 -

9 **ISSUES ON THE LICENSE DEFENSE**..... - 14 -

10 **Issue 2: Whether BindView’s development of the bv-Control for Internet Security (“bv-CIS”), which was**

11 **developed with Netbula ONC RPC SDK, constituted a transfer of the Netect, Inc. license from Netect, Inc. to**

12 **BindView** - 15 -

13 **Issue 3: Whether the one distribution license (which Plaintiff contends was non-exclusive and subject to**

14 **limitations) for Netbula’s runtime library which Netect, Inc. purchased in July 1998 was legally transferred to**

15 **its parent company Netect, Ltd, which sold all of its stock to BindView in 1999**..... - 17 -

16 **Issue 4: Whether BindView’s distribution of the bv-Control for Internet Security (“bv-CIS”), which contained**

17 **“pwrpc32.dll”, was done with a distribution license** - 17 -

18 **Issue 5: Whether the Symantec-Buena Vista Acquisition Corp-BindView reverse triangular merger allowed**

19 **Symantec to legally acquire the licenses originally granted to Netect, Inc.**..... - 18 -

20 **Issue 6: Whether a copyright owner’s burden in proving that a copyright defendant exceeded the scope of a**

21 **copyright license in a copyright infringement action leads to the conclusion that the copyright owner has the**

22 **burden to prove the scope or terms of the copyright license itself** - 19 -

23 **Issue 7: Whether copyright owner has the burden to prove that a copyright defendant has assented to the**

24 **restrictions of a copyright license in an infringement action**..... - 21 -

25 **Issue 8: Whether Plaintiff should have been allowed additional discovery on the Netect licenses**..... - 22 -

26 **ISSUES ON THE FRAUD AND CONTRACT CLAIMS**..... - 23 -

27 **Issue 9: Whether BindView promised to Netbula on November 7, 2005 that it would pay a reasonable amount of**

28 **license fee for each copy of Netbula software BindView made or authorized others to make**..... - 23 -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

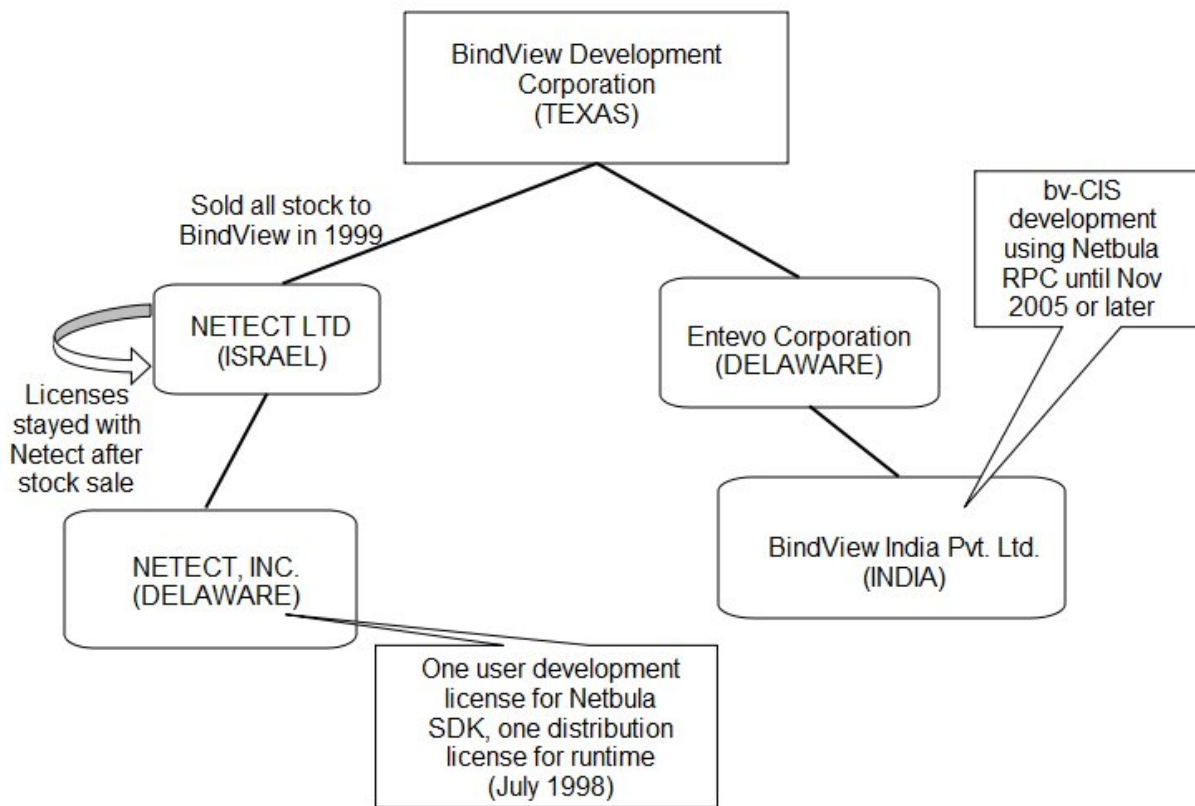
Issue 10: Whether BindView refused to provide a complete license usage report and pay royalties and interests .-

24 -

ALTERNATIVE MOTION FOR STAY JUDGMENT PENDING APPEAL.....- 26 -

CONCLUSION- 27 -

1 Based on the information in BindView’s October 2, 2005 disclosure letter (Brillet Decl,
 2 Ex. B, BV00678), the following diagram shows the relationship of relevant entities in October
 3 2005 and the movement of Netbula RPC software.
 4



19 Figure 1: BindView and the related subsidiaries as of October 2, 2005 (See BV00678)
 20

21 As explained above, the “operation of law” theory only leads to the conclusion that the
 22 Netect licenses stayed with Netect. BindView’s development of bv-Control for Internet Security
 23 with Netbula RPC was thus done with a transfer of the Netbula ONC RPC development license
 24 from Netect, Inc.. to BindView. By moving development of bv-CIS to India, BindView’s further
 25 impermissibly transferred the Netect, Inc. license to the Indian company⁴.
 26
 27

28 ⁴ According to BindView’s documents, the name of the Indian company was BindView India Private Limited, which was 99% owned by Entevo Corporation as of October 2005.

EXHIBIT 13

EXHIBIT 13

10/15/2007	307	Opposition re Sun Microsystems Inc, EMC Corporation, and Darden Restaurants Inc's 303 MOTION to Intervene <i>and Modify Protective Order</i> filed by Dongxiao Yue. (slh, COURT STAFF) (Filed on 10/15/2007) (Entered: 10/16/2007)
10/15/2007	308	Declaration in Support of 307 MOTION to Intervene, to Enforce Protective Order, and to Unseal Document; in Opposition to 303 MOTION to Intervene <i>and Modify Protective Order</i> filed by Dongxiao Yue. (Related document(s) 307 , 303) (slh, COURT STAFF) (Filed on 10/15/2007) Additional attachment(s) added on 10/18/2007 (slh, COURT STAFF). (Entered: 10/16/2007)
10/15/2007	309	EXHIBITS A-F re 308 Declaration in Support filed by Dongxiao Yue. (Related document(s) 308) (slh, COURT STAFF) (Filed on 10/15/2007) Additional attachment(s) added on 10/18/2007 (slh, COURT STAFF). (Entered: 10/16/2007)
10/15/2007	310	EXHIBITS G-J re 308 Declaration in Support filed by Dongxiao Yue. (Related document(s) 308) (slh, COURT STAFF) (Filed on 10/15/2007) Additional attachment(s) added on 10/18/2007 (slh, COURT STAFF). (Entered: 10/16/2007)
10/15/2007	311	CERTIFICATE OF SERVICE by Dongxiao Yue re 308 Declaration in Support, 309 Exhibits, 307 Memorandum in Opposition, 307 MOTION to Intervene MOTION for Protective Order MOTION to Unseal Document, 310 Exhibits (slh, COURT STAFF) (Filed on 10/15/2007) Additional attachment(s) added on 10/19/2007 (sv, COURT STAFF). (Entered: 10/16/2007)
10/16/2007	312	CERTIFICATE OF SERVICE by Dongxiao Yue re 308 Declaration in Support, 309 Exhibits, 307 MOTION to Intervene MOTION for Protective Order MOTION to Unseal Document, 310 Exhibits (slh, COURT STAFF) (Filed on 10/16/2007) (Entered: 10/18/2007)
10/30/2007	313	MEMORANDUM in Opposition re 307 MOTION to Intervene MOTION for Protective Order MOTION to Unseal Document <i>and Plaintiff Netbula, LLC's Motions to Substitute Parties and for Withdrawal of Counsel</i> filed by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Related document(s) 307) (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
10/30/2007	314	Declaration of Jedediah Wakefield in Support of 313 Memorandum in Opposition, <i>to Plaintiff Netbula, LLC's Motions to Substitute Parties and for Withdrawal of Counsel, and to Non-Party Dongxiao Yue's Motion to Intervene and Enforce Protective Order</i> filed by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Attachments: # 1 Exhibit Exhibit A Defendants' Notice of Manual Filing)(Related document(s) 313) (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
10/30/2007	315	Proposed Order re 313 Memorandum in Opposition, <i>to Non-Party Dongxiao Yue's Motion to Intervene and Enforce Protective Order</i> by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
10/30/2007	316	MOTION to Seal <i>Materials Designated as Confidential</i> filed by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
10/30/2007	317	Declaration of Albert L. Sieber in Support of 316 MOTION to Seal <i>Materials Designated as Confidential</i> filed by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Related document(s) 316) (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
10/30/2007	318	Proposed Order re 316 MOTION to Seal <i>Materials Designated as Confidential</i> by Sun Microsystems, Inc., EMC Corporation, Darden Restaurants, Inc.. (Sieber, Albert) (Filed on 10/30/2007) (Entered: 10/30/2007)
11/06/2007	319	Reply in Support re 307 MOTION to Intervene MOTION for Protective Order MOTION to Unseal Document filed by Dongxiao Yue. (slh, COURT STAFF) (Filed on 11/6/2007) (Entered: 11/09/2007)