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Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NETBULA, LLC, a Delaware limited
liability company,

Plaintiff-Appellee,

and
SUN MICROSYSTEMS, INC., et al.,

Intervenors – Appellees,

v.

DONGXIAO YUE,

Intervenor – Appellant,

v.

BINDVIEW DEVELOPMENT
CORPORATION, a Texas corporation;
et al.,

Defendants – Appellees.

Case No. 07-17355

N.D. Cal Case No. C-06-070711-MJJ

**APPELLANT'S PETITION FOR
PANEL REHEARING**

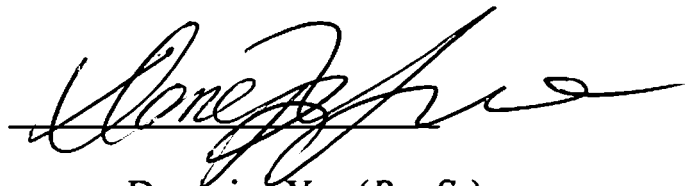
[FRAP Rule 40]

On February 15, 2008, the Court entered an order dismissing the instant appeal for lack of jurisdiction. Citing *KL Group v. Case*, 829 F.2d 909 (9th Cir. 1987), the Panel found that a protective order is not an appealable interlocutory order. However, in the more recent case of *Osband v. Woodford*, 290 F.3d 1036 (9th Cir. 2002), the Ninth Circuit has held that a “protective order is the ‘conclusive’ determination by the district court of the legal issue in question” and “resolves an ‘important’ issue ‘separate from the merits’ of the underlying action.” *Id.* at 1039-40. Accordingly, the protective order is appealable. Similarly, in *In re Napster, Inc. Copyright Litigation*, 479 F.3d 1078 (9th Cir. 2007), this Court also found the protective order immediately appealable. As the more recent cases suggest, the Court must, at the minimum, consider the issues involved to determine whether a protective order is an appealable interlocutory order.

Since a protective order is an appealable interlocutory order, Appellant respectfully requests panel rehearing of the instant appeal after the parties have fully briefed the case.

Respectfully submitted,

DATED: February 29, 2008



Dongxiao Yue (*Pro Se*)

**CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT RULE
40-1**

I certify that the within Petition for Panel Rehearing is proportionately spaced, has a typeface of 14 points, and contains no more than 2,00 words.


Dongxiao Yue

CERTIFICATE OF SERVICE

I certify that I served the following persons the above Petition for Panel Rehearing on February 29, 2009:

The appellees, by emailing a true copy to their attorneys of record, Mr. Laurence Pulgram, Mr. Jedediah Wakefield, Mr. Albert Sieber, Ms. Vonnah M. Brillet, in accordance to an agreement on service by email.


Dongxiao Yue