

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UPAID SYSTEMS, LTD.,)	
a British Virgin Island corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
SATYAM COMPUTER SERVICES, LTD.,)	
an Indian corporation, and)	
RAGHURAM GOVINDACHARYULA)	
)	
Defendants.)	

Civil Action No. 2-07-CV-114
JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Upaid Systems, Ltd., by its undersigned attorneys, as and for its Second Amended Complaint against Satyam Computer Services, Ltd. and Raghuram Govindacharyula, alleges and shows to the Court as follows:

PARTIES

1. Plaintiff Upaid Systems, Ltd. is a corporation incorporated under the laws of the British Virgin Islands. Its principal place of business is located at Trident Chambers, Wickhams Cay, Road Town, Tortola, British Virgin Islands. The corporate history of Plaintiff is as follows:

- a) On or about November 19, 1997, "In Touch Technologies Limited" ("ITTL") was incorporated in the British Virgin Islands.
- b) On or about June 15, 1999, "In Touch Technologies Holdings Limited" ("ITTHL") was incorporated in the British Virgin Islands.
- c) On or about January 12, 2000, ITTL merged into ITTHL.
- d) On or about August 16, 2000, ITTHL changed its name to "U-Paid Systems Limited."

e) On or about September 24, 2001 U-Paid Systems Limited changed its name to “Upaid Systems Limited.”

The term “Upaid” as used herein refers to Plaintiff and its predecessor entities.

2. Defendant Satyam Computer Services, Ltd. is a corporation incorporated under the laws of India. The address of its principal place of business is 2nd floor, Mayfair Centre, Sardar Patel Road, Secunderabad, 500 003, India. Satyam Enterprise Solutions Limited was previously a subsidiary of Satyam Computer Services, Ltd., which has now merged into the parent company. The term “Satyam” as used herein refers to Satyam Enterprise Solutions Limited and its successor, Satyam Computer Services, Ltd.

3. Raghuram Govindacharyula (“Govind”) is a citizen of India who resides at 2248 Micarta Drive, Plano, Texas 75025. Plaintiff does not seek monetary damages from this Defendant, but joins this Defendant for purposes of the Count I request for declaratory judgment.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1338. Plaintiff’s claims arise under an Act of Congress relating to patents, and specifically under 35 U.S.C. §§ 101 *et seq.*, in that the Plaintiff’s right to relief on each claim necessarily depends upon the resolution of a substantial question of federal patent law, namely, the validity and enforceability of Patent No. 6,320,947 B1 (“the ‘947 Patent”) and Patent No. 6,714,632 B2 (“the ‘632 Patent”), making patent law a necessary element of each of Plaintiff’s claims. There is also jurisdiction because there is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant Satyam. Satyam is now and at all times pertinent hereto has been engaged in substantial and not isolated activities within the State of Texas, and at all such times has conducted and does conduct substantial business within

this State. Further, Satyam purposefully established minimum contacts within Texas by entering into an Assignment Agreement, the breach of which is set forth in Count III hereof. This Assignment Agreement required performance by Satyam in Texas.

6. Venue within this District is properly laid under 28 U.S.C. §§ 1391(b), (c), and (d), in that Satyam resides in this District within the meaning of those provisions because it is a corporation subject to personal jurisdiction in this District, a substantial part of the events and omissions giving rise to the claims occurred in this District, and Satyam is an alien within the meaning of 28 U.S.C. § 1391(d).

7. This Court has personal jurisdiction and venue over Govind because he resides in the Eastern District of Texas.

PROCEDURE

8. Defendant Satyam has not yet filed a responsive pleading in this matter. *See McGuire v. Turnbo*, 137 F.3d 321, 325 n.4 (5th Cir. 1998) (motion to dismiss not considered a responsive pleading). Therefore, this Second Amended Complaint is made as a matter of right without leave of Court pursuant to Federal Rule of Civil Procedure 15(a) and pursuant to a Docket Control Order entered herein.

BACKGROUND

9. Upaid is a provider and enabler of electronic payment services via mobile and fixed line telecommunications and other telecommunications services networks.

10. Satyam is a software developer and consultant.

11. The founders of Upaid conceived a novel framework for an advanced intelligent processing platform – a network-independent computer based system, that executed the critical business processes of Authentication, Authorization and Accounting (“Triple A”), with respect

to value added services for individual and corporate telephone users in both the fixed and mobile telephone markets (hereafter the “Inventions”).

12. In order to exploit the Inventions commercially, it was necessary to design, specify and develop software which would enable the processing of the critical Triple A functions referred to above. Upaid decided to outsource this software development.

13. Upaid ultimately chose Satyam to provide the outsourced software development. Thus, on or about May 29, 1997, the parties entered into a Memorandum of Understanding (“MOU”), the first contractual agreement between the parties with respect to such services.

14. Pursuant to Clause 1 of the MOU, Satyam agreed to develop for Upaid certain Operations Support Systems software (termed “OSS” in the MOU), which included, inter alia, the products that later became known as Call Manager and Net Manager (the “Software Systems”).

15. Effective January 1, 1998, Satyam, represented by its then CEO Mr. Srinu Raju, executed an Assignment Agreement in favor of Upaid (the “Assignment Agreement”) pursuant to which Satyam assigned and transferred in perpetuity “all worldwide right, title and interest” in computer software entitled Call Manager and Net Manager (“the Software”) to Upaid, or purported to do so. This Assignment Agreement, which is governed by the law of New York, remains the valid and binding agreement governing the relationship between the parties with respect to these issues and has not been superseded or modified by any other contract or agreement.

16. The Assignment Agreement also assigned, or purported to assign, to Upaid “the right to seek patent protection for inventions and to own all patent applications and Letters Patent or similar legal protection for such inventions in all countries throughout the world.”

17. Satyam knew that Upaid intended to seek to patent the Inventions. In the Assignment Agreement, Satyam “**requests** the Register of Copyrights of the United States and the **Commissioner of Patents and Trademarks of the United States ... to issue** copyright registrations, **patents**, trademark registration or legal equivalents ... to [Upaid].” (emphasis added)

18. The Assignment Agreement also expressly addressed the possibility that Upaid might be required to initiate litigation in the U.S. to enforce the U.S. patents. In this respect, this Assignment Agreement contains an important covenant that addresses Satyam’s obligation vis-à-vis such litigation. This covenant requires Satyam (1) to provide Upaid with all pertinent facts and documents relating to the patents as is known or accessible to Satyam, (2) to testify in any litigation related to the patents, and (3) to deliver to Upaid, or its lawyers, any documentation or affidavits necessary to enforce the patents.

19. While performing the outsourced software development work for Upaid, several Satyam employees developed parts of the architecture and design of the computer based system comprising part of the Inventions. In contemplation of filing for a patent on the Inventions, Upaid requested and Satyam provided a list of Satyam employees who were “inventors” of certain elements of the software based systems for U.S. patent law purposes. This list included Ramkumar K. Mambakkam (“Mambakkam”) and Defendant Govind.

20. In order to receive patent protection for its Software, it was necessary for Upaid to file title documents with the United States Patent and Trademark Office (“USPTO”) that reflected a complete chain of title.

21. On or about September 10, 1998, Upaid initially contacted Satyam and requested that all of the employees whom Satyam had identified as making inventive contributions execute formal assignments which could be filed with the USPTO.

22. On September 15, 1998, Upaid took the first step in the formal patent application process at the USPTO by filing a provisional application. This provisional application, which in fact consisted of two separate applications with serial number 60/100,440 and 60/100,470, was filed for the purpose of establishing a priority date for the Inventions. Under the rules of the USPTO, Upaid was required to file a formal utility patent application within one year of the provisional filing, i.e., September 15, 1999, in order to obtain the benefit of this priority date.

23. Upaid thus had a September 14, 1999 deadline for filing documents for a utility patent, which included documents reflecting unity of ownership and chain of title from all co-inventors. Satyam was aware of this deadline.

24. In late 1998, Simon Joyce, CEO of Upaid, asked Dilip Jha, Manager of the Upaid project for Satyam, to also provide evidence that Satyam's assignment to Upaid through the Assignment Agreement was itself supported by internal employee agreements that assigned inventor rights from the Satyam employee inventors to Satyam.

25. In response to Mr. Joyce's inquiry, Sairam T, an executive in Satyam's Human Resources Department, sent an e-mail to Mr. Joyce on December 1, 1998 with an attached form of non-disclosure agreement that he represented was applicable to all Satyam associates working on the Upaid product development. The form agreement attached to the subject e-mail makes it clear that Satyam, and not the employee, retains and owns title to any intellectual property developed by Satyam's employees in the scope and course of their employment. This

representation has turned out to be patently false as was revealed in subsequent legal proceedings in England.

26. Consistent with the e-mail, Murali Venkantaranonia, General Manager of Satyam, later repeated the misrepresentation that employees of Satyam routinely executed internal employment agreements under which they assigned intellectual property rights to Satyam. This purported practice, if adopted, would have been in conformity with standard industry practices and consistent with Satyam's claims of adherence to international best practices in outsourcing work. Thus, Upaid had no reason to question Satyam's representations, which it took to be true. Unfortunately, these representations were part of a fraudulent conspiracy to hide the fact that Satyam had not conveyed good title to Upaid in the Assignment Agreement.

27. Not having received the critical assignments of rights, on July 6, 1999, almost ten months after Upaid had first requested inventor assignments from Satyam (on or about September 10, 1998, as referenced in paragraph 21 herein), Mr. Marc Chafetz, in-house counsel for Upaid, sent an e-mail to Srinu Raju of Satyam asking that Raju gather "*signatures of various Satyam employees in connection with our patent filings.*"

28. On or about August 28-29, 1999, Upaid finally received a package of inventor assignments from Satyam that included assignments dated July 7, 1999 from Mambakkam and Govind. These assignments are dated the day after Mr. Chafetz had sent his e-mail to Satyam requesting that Satyam obtain such signatures. The record clearly reflects that Satyam was the party obtaining the purported signatures on the inventor assignments.

29. On September 14, 1999, Upaid filed for its initial utility patent, now known as the granted patent US 6,320,947 ("the '947 Patent"). Upaid filed the Assignment Agreement and the

inventor assignments with the USPTO in this filing for the purpose of establishing its unity of ownership and thereby its right to register and fully prosecute this patent application.

30. In addition to assignments, the USPTO requires declarations from all joint inventors wherein they declare and acknowledge their role as joint inventors, and undertake a personal duty of disclosure and candor to the USPTO regarding all matters material to patentability. These declarations must be signed under oath.

31. On or about October 6, 1999, the USPTO provided Upaid with a formal Notice of Missing Parts which requested declarations from the joint inventors. This request was forwarded on to Satyam, along with a blank Combined Declaration form on October 8, 1999. A single Combined Declaration bearing 20 signatures purportedly of the inventors, each dated separately between October 25, 1999 and October 29, 1999, including Mambakkam and Govind, was returned by Satyam to Upaid's patent attorneys on or about November 4, 1999. Thus, the record reflects that Satyam obtained the signatures on the Combined Declaration which was then filed by Upaid with the USPTO.

32. The signature at the sixteenth entry on the Combined Declaration purports to be that of Defendant "Raghuram Govind." Directly under this name, and corresponding to a space designated to be for the "inventor's signature", the Combined Declaration bears a signature purporting to be that of Defendant Govind and the date of 26 October 1999.

33. The signature at the twentieth entry on the Combined Declaration purports to be that of one "Ram Kumar M.K." Directly under this name, and corresponding to a space designated to be for the "inventor's signature", the Combined Declaration bears a signature purporting to be that of Ram Kumar M.K. and the date of 27 October 1999. Ram Kumar M.K. is otherwise known as Ramkumar K. Mambakkam.

34. Pursuant to its obligations under the Assignment Agreement, Satyam delivered or caused to be delivered to Upaid two contracts of assignment bearing signatures purporting to be those of Ram Kumar M. K. (the “Mambakkam Assignments”).

35. In summary, the Mambakkam Assignments state that Mambakkam is an Indian-resident employee of Satyam, and purport to assign to Satyam all his interest in the aspect of the Software which is the subject of Upaid’s Provisional Applications that ultimately resulted in issuance of the ‘947 Patent and the ‘632 Patent. The last page of each assignment bears a signature purporting to be that of Mambakkam directly above the name “Ram Kumar M.K.” and the date of July 7, 1999.

36. Pursuant to its obligations under the Assignment Agreement, Satyam delivered or caused to be delivered to Upaid two contracts of assignment bearing signatures purporting to be those of Defendant Govind (the “Govind Assignments”).

37. The Govind Assignments are substantially identical in their terms to the Mambakkam Assignments. The last page of each assignment bears a signature purporting to be that of Govind above the name “Raghuram Govind” and the date of July 7, 1999.

38. The Mambakkam Assignments and the Govind Assignments, if properly executed, would have provided valid instruments in writing reflecting a transfer of ownership rights that could have been recorded in the United States Patent and Trademark Office pursuant to 35 U.S.C. § 261.

39. The ‘947 Patent was granted on November 20, 2001 based, *inter alia*, on the ownership reflected through the Assignment Agreement and the Inventor Assignments, including purported Assignments from Mambakkam and Govind, and the Combined Declaration, which included the purported oaths of Mambakkam and Govind.

40. On May 9, 2001, Upaid filed an application for a continuation of the '947 Patent, which relied upon, *inter alia*, the parent specification contained in the '947 Patent, as well as, *inter alia*, the Assignment Agreement previously filed and is now known as the granted patent US 6,381,316 (the " '316 Patent"). The '316 Patent was granted on April 30, 2002.

41. On June 29, 2001, Upaid filed an application for a continuation-in-part, which also relied upon, *inter alia*, the parent specification contained in the '947 Patent, as well as the Assignment Agreement previously filed and is now known as the pending patent 09/894,890 (the " '890 Application").

42. On April 3, 2002, Upaid filed an application for a continuation of the '316 Patent, which also relied upon, *inter alia*, the parent specification contained in the '947 Patent, as well as the Assignment Agreement previously filed and is now known as the granted patent US 6,714,632 (the " '632 Patent"). The '632 Patent was granted on March 30, 2004.

43. On October 15, 2003, Upaid filed an application for a continuation of the '632 Patent, which also relied upon, *inter alia*, the parent specification contained in the '947 Patent, as well as the Assignment Agreement previously filed and is now known as the granted patent US 7,308,087 (the "'087 Patent") (collectively the "Patents," and each individually a "Patent"). The '087 Patent was granted on December 11, 2007.

44. The entirety of Upaid's patent portfolio is either wholly or partially dependent upon the '947 Patent, which in turn is dependent for the title purposes upon the Assignment Agreement. Additionally, the title to the intellectual property on which the award of both patents '947 and '632 was based on is derived from the conveyance contained in the Assignment Agreement.

45. On July 29, 2005, Upaid commenced proceedings in the United States District Court for the Eastern District of Texas alleging infringement of both the '947 Patent and the '632 Patent by Qualcomm and Verizon Wireless. This case is styled *Upaid Systems, Ltd. v. Qualcomm Incorporated and Cellco Partnership d/b/a Verizon Wireless*, Cause No. 2:05-CV-00346, in the U.S. District Court for the Eastern District of Texas, Marshall Division, reference to which is here made (the "Infringement Action").

46. In the Fall of 2006, Qualcomm and Verizon Wireless served Upaid in Texas with a statutory declaration made by Mambakkam dated September 6, 2006 (the "Mambakkam Declaration"), essentially stating that his purported signatures on the Mambakkam Assignments and Combined Declaration were forged. At the time of this Declaration, Mambakkam was a Texas resident.

47. The same defendants also served Upaid in the Infringement Action with a statutory declaration made by Defendant Govind dated November 28, 2006 (the "Govind Declaration"), essentially stating that his purported signatures on the Govind Assignment and Combined Declaration were also forged. At the time of the Declaration, Govind was a Texas resident and remains a Texas resident.

48. The allegations of forgery reflected in the Govind and Mambakkam Declarations directly challenged the title Upaid held to the '947 and '632 patents, and caught Upaid totally by surprise. Prior to being served with the Govind Declaration, Upaid had no reason to know or even suspect that the signatures were forgeries.

49. Verizon Wireless also served upon Upaid a fully executed "Patent Purchase Agreement," under the terms of which Mambakkam assigned his inventor rights in and to '947

and '632 Patents to Verizon Wireless. This gave Verizon Wireless a license/ownership defense to the Infringement Action.

50. Upon being confronted with the allegation of forgery of documents provided to it by Satyam, Upaid contacted Satyam in December 2006 and requested Satyam's assistance in rebutting the infringement defendants' allegations, relying upon Satyam's internal employee assignments to defeat the threat to the title of the intellectual property put at issue by the alleged forgeries.

51. The Assignment Agreement required Satyam to fully cooperate with Upaid in defending the attacks of Qualcomm and Verizon Wireless on the Patents in the Texas Infringement Action, and more specifically, the Assignment Agreement required Satyam to "testify" and promptly deliver "papers, instruments or affidavits" required in any "litigation" to "enforce" the U.S. Patents. Thus, Satyam was contractually obligated by the plain and unambiguous language of the Assignment Agreement to come to Texas and present evidence and witnesses to rebut the forgery allegations and to help Upaid prosecute the Infringement Action and defend the Patents.

52. Satyam's original response to Upaid's request for assistance was a delaying tactic. They simply asked for information from Upaid, which Upaid promptly provided.

53. On January 5, 2007, Satyam represented to Upaid that it had no information to add to Upaid's scant knowledge, and that it was unwilling to offer further assistance.

54. On the next business day, January 8, 2007, Upaid served a subpoena on Satyam to obtain documents and testimony. The subpoena requested the production of documents by January 15, 2007 and the designation and deposition of a witness representing Satyam pursuant to Federal Rule of Civil Procedure 30(b)(6) by January 22, 2007. In response, Satyam produced

only a very limited number of documents, none of which addressed the forgery issue, and advised that, contrary to its obligations under the Assignment Agreement, it would not provide a witness. Furthermore, Satyam was unable or unwilling to produce the requisite internal employee assignments for Messrs. Mambakkam and Govind required to demonstrate that Satyam had passed good title to Upaid via the Assignment Agreement.

55. Faced with the forgery evidence and the Mambakkam sale of patent rights, and with Satyam refusing to provide evidence or witnesses to rebut the forgery claims, Upaid had no other choice but to settle its Infringement Action on draconian terms. Upaid was forced to give up its considerable claims for damages and royalties, to provide both Qualcomm and Verizon Wireless with royalty-free licenses and to covenant not to sue any of Qualcomm's worldwide licensees for its BREW platform or its Data Services.

56. Upaid initially filed suit against Satyam in April of 2007 in this Court. Satyam then filed suit in London in June of 2007 seeking to enjoin Upaid from proceeding with the claims asserted in the Federal Case, under various theories based on later agreements between the parties the last of which contained a submission to the exclusive jurisdiction of the English Courts. *See Satyam Computer Services Limited and Upaid Systems Limited*, In the High Court of Justice, Queen's Bench Division, Commercial Court, Claim No. 2007 Folio 1041, ("the English Proceeding").

57. Satyam lost the English Proceeding comprehensively. On January 17, 2008, the English Court rendered its judgment and held that:

- The Assignment Agreement had not been superseded by later agreements between the parties, but continued in full force and effect and governed the relationships between them with respect to its subject matter.
- The claims in the Federal case, which are the same claims alleged herein (except a request for declaratory judgment regarding validity or enforceability of Upaid's patents in the Federal case that is not requested

herein) were not released or otherwise precluded by a Settlement Agreement effective December 31, 2002.

- The claims in the Federal case (and, accordingly, the claims asserted herein) were not required to be litigated in London.

58. Satyam appealed the decision to the Court of Appeal in England. During oral arguments to the appellate court, Satyam conceded that it did not own title to the intellectual property in issue at the time it entered into the Assignment Agreement with Upaid and purported to assign that intellectual property to it. This concession is reflective of testimony by Murali V. and Satyam's U.S. law expert to that effect at the bench trial.

59. On May 9, 2008, the Court of Appeal for England and Wales dismissed all grounds of appeal, thereby affirming the trial court's decision. Specifically, the court held:

- It has not been suggested (apart from the jurisdiction clause argument) that Texas is not an appropriate forum, nor that England is an appropriate forum. The court was told that Satyam has five regional offices in the United States . . . Whether a dispute under a different contract is within a jurisdiction agreement depends on the intention of the parties as revealed by the agreement. The effect of clause 3.1(b) [of the Settlement Agreement] is that any claims under the Assignment Agreement are governed by that agreement and not by the Settlement Agreement. Claims under an agreement [the Assignment Agreement] preserved by the Settlement Agreement do not "relate" to the Settlement Agreement. (emphasis and explanation added)

60. The Assignment Agreement, which has been confirmed by the London Court of Appeal as the governing agreement in this case, makes no provision for any limitation of damages between the parties.

61. Satyam attempted, to no avail, to obtain the permission of the Court of Appeal to appeal to the House of Lords in England. In imploring the Court of Appeal that the House of Lords should hear the appeal, it acknowledged the very substantial sums of money at stake in this case.

62. Satyam is now barred to contest the English decisions under principles of res judicata and collateral estoppel, and is barred from attempting to reverse its position on failure of title, which it has admitted.

**COUNT I: DECLARATORY JUDGMENT
REGARDING VALIDITY/ENFORCEABILITY OF UNITED STATES PATENTS**

63. The allegations of paragraphs 1-61 are herein incorporated by reference.

64. The validity and enforceability under U.S. patent law of the '947 and '632 Patents is in doubt because of the uncertainty created by the evidence of forgery from Mambakkam and Defendant Govind.

65. The controversy over the authenticity of the questioned signatures is ripe for judicial determination in that there is no reasonably foreseeable future development that is likely to sharpen or otherwise clarify the matters in dispute.

66. Upaid did not aid, abet, or participate in the forgery of any documents filed with the USPTO in relation to the '947 and '632 Patents, and did not otherwise engage in inequitable conduct with respect to the Patents.

67. Upaid alleges that Mambakkam and Defendant Govind are merely victims of the forgeries, and have likewise not engaged in inequitable conduct with respect to the Patents.

68. On information and belief, Upaid contends that any forgery of the subject documents must have been perpetrated by Satyam, its employees or representatives, without Upaid's knowledge, consent or approval.

69. Plaintiff Upaid therefore requests, pursuant to 28 U.S.C. § 2201 and 35 U.S.C. §§ 101 *et seq.* (i) a declaration of the authenticity or inauthenticity of the signatures at issue and (ii) a declaration of the legal status of the '947 and '632 Patents, *i.e.*, whether the patents are

valid and enforceable, and generally, (iii) a declaration regarding the legal relations created by the same.

70. The question of authenticity of the signatures on the Govind Assignments also raises a justiciable ownership issue. Plaintiff Upaid therefore additionally requests a declaratory judgment with respect to whether Defendant Govind owns any interests in the subject Patents.

COUNT II: FRAUD OR NEGLIGENT MISREPRESENTATION, AND FORGERY

71. The allegations of paragraphs 1-69 are incorporated by reference.

72. Satyam was responsible for ensuring that the Combined Declaration and the Mambakkam and Govind Assignments were validly executed documents and that the signatures of Mambakkam and Govind on these documents were authentic.

73. Satyam represented that the signatures were authentic by transmitting the documents on which the purported signatures appeared to Upaid, and by failing to disclose that one or more of the signatures had not in fact been provided by the purported signatory, contrary to Satyam's legal duty to so disclose.

74. The representations of fact described above were false when made in that the purported "signatures" described herein were in fact forgeries at the time of the documents transmission and delivery.

75. Satyam knew that the purported signatures were forged and that the documents had not been validly executed; or, in the alternative, recklessly disregarded that the signatures were forged; or, in the alternative, transmitted the documents as a positive declaration of their authenticity without knowledge of the truth of that declaration and in reckless disregard of its truth; or, in the alternative, failed to discharge a legal duty to disclose that the signatures were forged.

76. The representations that the signatures were authentic and not forgeries were material because authentic signatures of inventors are necessary to obtain effective and functionally enforceable patents under federal law and to provide Upaid with recordable instruments evincing ownership thereof and, but for such representations, Upaid would not have lodged the Combined Declaration and the Mambakkam and Govind Assignments with the USPTO in support of its application for the '947 Patent but would instead have taken appropriate steps to secure authentic signatures on the appropriate documents. Upaid had no reason to question the authenticity of the signatures and consequently lodged the Combined Declaration and the Mambakkam and Govind Assignments with the United States Patent and Trademark Office. Upaid would not have done so if it had known the signatures were not authentic and Upaid would not be damaged from this conduct but for the forgeries.

77. Satyam intended for Upaid to rely upon the false representations concerning the authenticity of the transmitted documents in that, among other things, the entire purpose of the documents was, as Satyam knew, for use in prosecuting patent applications.

78. Upaid did, in fact, justifiably rely on the authenticity of the documents and the truth of Satyam's representations concerning the same by prosecuting patent applications based on the documents and initiating the Infringement Action. In doing so, Upaid exercised reasonable care for its own protection, but was nevertheless deceived by Satyam's false representations, as Satyam intended Upaid to be.

79. The false representations made regarding the forged documents are part of a continuing pattern of fraud perpetuated by Satyam with respect to their lack of good title to intellectual property developed for Upaid. Satyam materially misrepresented to Upaid that it had controls in place with its employees that conveyed all inventor rights to Satyam (*See*

paragraph 21 and 22 infra.). Satyam was well aware that these representations were false, and intended for Upaid to rely on same. Based upon press releases by Satyam when compared with testimony by Murali V. in the English Proceeding, Upaid contends that these kinds of misrepresentations were likely made to others and that such widespread fraud should be considered by the jury in setting punitive damages in this case.

80. Properly invoking the discovery rule, Upaid was not aware of the forgery and other misrepresentations and could not have reasonably discovered same until the Infringement Action.

81. Upaid's reliance upon the forgery and false representations described herein was detrimental to Upaid in many respects.

82. Upaid has been injured as a result of its detrimental reliance on the forgery and the false or negligent representations because it has invested substantial resources in the '947 and '632 Patents and, if and to the extent one or both of the same are ineffective or unenforceable under federal patent law, the value of those investments has been diminished or altogether eliminated to Upaid's damage in amounts that have not yet been fully determined, but are capable of ascertainment to a reasonable degree of legal certainty. Additionally, Upaid seeks to recover losses in the form of income, profits, royalties and other revenues that the patents would have generated but for Satyam's forgery and misrepresentations. Satyam's forgery and false or negligent representations have also impaired Upaid's ability to secure additional patents outside the United States and Upaid seeks to recover losses in the form of income, profits, royalties and other revenues that those patents would have generated. Such losses have not yet been fully determined, but are capable of ascertainment to a reasonable degree of legal certainty. Finally, but for the forgery and misrepresentations, Upaid would have prevailed, through settlement or

trial, in their patent infringement action against Qualcomm and Verizon Wireless. So Upaid also sues Satyam for the loss of the value of the Patent Infringement Action and the value of the concessions it was required to make in said case, along with the wasted costs incurred therein.

COUNT III: BREACH OF THE ASSIGNMENT AGREEMENT

83. The allegations of paragraphs 1-81 are incorporated by reference.

84. Under the Assignment Agreement, Satyam contractually agreed that it would:

[U]pon ITTL's request, provide ITTL with all pertinent facts and documents relating to the applications, registrations, Letters Patent and legal equivalents in foreign countries as may be known and accessible to Satyam and will testify as to the same in any interference or litigation relating thereto and will promptly execute and deliver to ITTL or its legal representative any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce the applications, registrations, Letters Patent and legal equivalents in foreign countries which may be necessary or desirable to carry out the purposes thereof.

85. The reference to "the applications, registrations, Letters Patent and legal equivalents in foreign countries" in this clause of the Assignment Agreement includes the '947 Patent, the '632 Patent and the applications made in respect of those patents.

86. In this clause of the Assignment Agreement, the reference to "documents" and "papers, instruments or affidavits" is a reference to validly executed and not forged documents, papers, instruments or affidavits.

87. In the alternative, it was an implied term of the Assignment Agreement that the documents, papers, instruments or affidavits required to be executed and delivered by Satyam would be validly executed and not forged documents, papers, instruments or affidavits.

88. In 1999, pursuant to Upaid's rights under the Assignment Agreement, Satyam was obligated to provide documents and assignments in the form of the Combined Declaration and the Mambakkam and Govind Assignments for the purpose of lodging the Declaration and the Assignments with the USPTO in support of the application for the '947 Patent.

89. In 1999, pursuant to its obligations, Satyam delivered or caused to be delivered to Upaid the Combined Declaration and the Mambakkam and Govind Assignments.

90. Satyam, as successor in interest to Satyam Enterprise Solutions Limited, stands in continuing breach of its obligations under the Assignment Agreement because the Combined Declaration and the Mambakkam and Govind Assignments are forgeries, and their transmission therefore did not discharge Satyam's obligation to deliver all documents, papers, instruments or affidavits relating to or necessary to obtain, maintain, issue and enforce the application for the '947 Patent and '632 Patent within the meaning of the Assignment Agreement.

91. Satyam further breached its obligations under the Assignment Agreement through its action and inaction in relation to the Texas Infringement Action.

92. Properly invoking the discovery rule, Upaid was not aware of the breach of contract and could not have reasonably discovered the breach of contract until the Infringement Action. Further, the cause of action for breach of contract did not finally accrue until the Infringement Action.

93. Upaid has been foreseeably damaged due to the contractual breach alleged above. But for the forgery and other breaches of Satyam's contractual obligations, Upaid would have prevailed, through settlement or trial in their patent infringement action against Qualcomm and Verizon Wireless. Upaid therefore sues Satyam for the loss of the value of the Patent Infringement Action and the value of the concessions it was required to make in said case, along with the wasted costs incurred therein. If the '947 and '632 Patents are invalid or ineffective, or their value in commercial terms is degraded, then Upaid also seeks damages for such economic losses and the loss of the patent portfolio. Upaid seeks to recover losses in the form of income, profits, royalties and other revenues that the patents would have generated but for Satyam's

breach of its contractual obligations. Satyam's breach of such obligations has also impaired Upaid's ability to secure additional patents outside the United States and Upaid seeks to recover losses in the form of income, profits, royalties and other revenues that those patents would have generated. Such losses have not yet been fully determined, but are capable of ascertainment of a reasonable degree of legal certainty.

COUNT IV: FAILURE OF TITLE

94. The allegations of paragraphs 1-92 are incorporated by reference.

95. The testimony by Satyam in the English Proceeding has confirmed the fact that at the time of the Assignment Agreement, and contrary to their prior representations, Satyam did not have agreements with the Satyam employee inventors that gave Satyam unity of ownership in the rights purported to be conveyed to Upaid through the Assignment Agreement.

96. Thus, there is a conceded failure of title that Satyam is now estopped to deny, at least insofar as Mambakkam and Govind's interests are concerned.

97. The aforesaid failure of title constitutes a continuing breach of the Assignment Agreement, and a breach of the continuing warranty that is express or implied therein.

98. The failure of title has caused Upaid considerable foreseeable injury and damage, and has created real uncertainty over Upaid's entire patent portfolio. This injury and damage encompasses the damage elements set forth in Count II and Count III herein. Upaid sues Satyam for the full measure of such actual damages.

PUNITIVE DAMAGES

99. In addition to actual damages, Upaid seeks exemplary damages against Satyam for its actual fraud and forgery.

100. Upaid seeks an amount of exemplary damages as determined by the jury, subject to any constitutional or statutory limits.

101. With respect to forgery and the criminal nature of this offense, Upaid pleads that there is no statutory cap on exemplary damages for this criminal act. *See* Texas Civil Practice and Remedies Code § 41.008 (c)(8).

JURY DEMAND

Plaintiff Upaid hereby demands a jury trial on all issues triable to a jury.

REQUEST FOR RELIEF

WHEREFORE, Upaid petitions this Court and requests that a judgment be entered and relief be granted in its favor as follows:

A. A declaratory judgment regarding the authenticity of the signatures on the Combined Declaration and Assignments, the lack of culpability of Upaid for any forgery or related inequitable conduct, and the effectiveness and enforceability under federal patent law of the '947 and '632 Patents;

B. An award of actual damages, which Plaintiff believes will exceed \$1 billion dollars, depending upon the declaratory judgment entered by the Court;

C. An award of punitive damages in the maximum amount allowed by law for Defendant Satyam's fraud and forgery;

D. An award of reasonable attorneys' fees incurred by Upaid;

E. An award for all courts costs incurred by Upaid;

F. An award of pre and post judgment interest as allowed by law; and

G. An award to Upaid of such other, further, or general relief as this Court may deem proper.

Dated: May 30, 2008

Respectfully submitted,

/s/ D. Patrick Long

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on May 30, 2008.

/s/ D. Patrick Long
D. Patrick Long