

Styller v. HPFS, No. 1:16-CV-10386

Before the Honorable Leo T. Sorokin,

U.S. District Judge

PLAINTIFFS' OPENING STATEMENT



July 9, 2020

Summary of Plaintiffs' evidence of counterfeiting

In 2010, HPFS India leased the equipment to TATA for the Commonwealth Games.

Inspira imported the equipment to India; TATA returned the equipment in 2011. Defendants did not inspect it for authenticity before or after the lease.

Inspira did not provide original importation documents with serial numbers of the imported equipment to Defendants despite multiple requests.

HPFS India sold one quarter of the equipment to ICT in December 2011 as genuine "H3C," the rest to TT Global in 2012.

25%

ICT's parts shipped to China (2012)

Tested by H3C on behalf of HPFS India (2013)

Incarceration and criminal investigation of ICT's sales associates; seizure of the transceivers; H3C's and Defendants' statements to the PSB that the seized transceivers were counterfeit based on fake trademark logos; holding up RMA refund to ICT while demanding release from Individual Plaintiffs (2013).

75%

TTG's parts shipped to Dubai (2012)

Tested by H3C at HPFS' request (2013)

Defendants concealed test results from the PSB and ICT; secretly instructed TT Global to destroy its transceivers due to their "questionable" nature and origination; discussed paying TT Global \$200K for destroying them (2013).

Second Amended Complaint

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ALEXANDER STYLLER,
COMMUNICATIONS & TECHNOLOGIES, INC., JADE CHENG, JASON
CAROLINE MARAFIO, CHENG, CHANGZHEN N
MEDXIANG CHENG, FAN
CHANGHUA NI,

v.

HEWLETT-PACKARD FINANCIAL SERVICES COMPANY, HP
FINANCIAL SERVICES COMPANY LIMITED, HP INC., HEWLETT
ENTERPRISE COMPANY

1. The counterfeit nature of the Equipment revealed; ICT's Chinese offices raided; the Individual Plaintiffs arrested.

52. In the meantime, Plaintiffs continued to use their best efforts to resell the first installment of the Equipment in China. In December 2012, however, representatives of H3C lodged a complaint with the local police accusing Plaintiffs in marketing counterfeit H3C products because the transceivers contained counterfeit H3C trademark logos, without informing the police that the Equipment was sold to ICT by H3C's affiliates, the HPFS Defendants, as genuine H3C Equipment.

Plaintiffs, by their undersigned counsel, and other wrongdoings against Defendants and the Equipment sold to Plaintiffs expressly for resale purposes, and the imprisonment of the Plaintiffs reselling that equipment.

1. Plaintiff Alexander Styller is a resident of Massachusetts, with the business address of Massachusetts 02148.

2. Plaintiff ICT is a Massachusetts corporation with its principal office at 100 Street, Malden, Massachusetts 02148. Since

225. In sum, from December 2012 until August 2014, H3C – the manufacturer and the exclusive trademark owner of the H3C brand and trademark logo, and thus *the ultimate authority* on the subject of counterfeiting with respect to its own products – made several statements to the police (a) unequivocally confirming that the seized transceivers were counterfeit based on H3C's visual inspection of the security features of H3C trademark logos, (b) explaining why neither the electronic power-on test nor the transceivers' serial product numbers could be used to challenge the results of its visual inspection, and (c) explaining that HP had no license rights to its trademark (let alone any authority to dispute its words on the authenticity of its own trademarked products).

Origination of the Equipment (emails between HPFS India and Inspira, 2011)

Message

From: Goodwin, Bevan [/O=COMPAG/OU=AP2/CN=RECIPIENTS/CN=GOODWINB]
Sent: 7/26/2011 1:25:43 AM
To: 'Manoj Kanodia' [manoj.kanodia@inspira.co.in]
CC: Bartley, Kevan [kevan.bartley@hpe.com]; Silvestri, James [james.silvestri@hpe.com]; West, Ross [ross.west@hp.com]; Sanjaykumar Dhoot [sanjaykumar.dhoot@inspira.co.in]; O'Grady, Jim [jim.ogrady@hpe.com]
Subject: RE: Original importation documentation for CWG TCS equipment returning from lease.

Dear Manoj, From our initial discussions going back to late 2010, yourself and Sanjaykumar have both provided a commitment to provide the necessary import documentation that we will require in order to complete a successful re-export of the H3C Comm Games lease products. This commitment has been reiterated by yourself and Sanjaykumar on more than one occasion since those initial discussions. Unfortunately, the committed handover dates for the documentation has been missed on more than 2 occasions.

These
India

We urg
a final

Regard
Bevan
APJ En
Techno
PH +61

From:
Sent:
To: G
CC: B
Subject

Dear B

A good
correl
urgent
complete
have a
inform
Indiv

Will u
Best e

Sanjay
Inspira

7 23,
http://
/ +91

-----Original Message-----
From: Goodwin, Bevan [mailto:bevan.goodwin@hp.com]
Sent: 29 June 2011 06:12
To: Sanjaykumar Dhoot
Cc: Bartley, Kevan; Silvestri, James; West, Ross; 'Manoj Kanodia'
Subject: RE: Original importation documentation for CWG TCS equipment returning from lease.

Hi Sanjaykumar, can you please provide us with an update on your progress with extracting and providing copies of the original importation documentation ?

From: Goodwin, Bevan [mailto:bevan.goodwin@hp.com]
Sent: 29 June 2011 06:12
To: Sanjaykumar Dhoot
Cc: Bartley, Kevan; Silvestri, James; West, Ross; 'Manoj Kanodia'
Subject: RE: Original importation documentation for CWG TCS equipment returning from lease.

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Subject: RE: Original importation documentation for CWG TCS equipment returning from lease.

Origination of the Equipment (emails between HPFS India and Inspira, 2011)

Message

From: Goodwin, Bevan [/O=COMPAQ/OU=AP2/CN=RECIPIENTS/CN=GOODWINB]
Sent: 4/13/2011 11:17:43 AM
To: 'Sanjaykumar Dhoot' [sanjaykumar.dhoot@inspira.co.in]
CC: Bartley, Kevan [kevan.bartley@hpe.com]; Harris, Tom [tom.harris@hpe.com]; O'Grady, Jim [jim.ogrady@hpe.com]; Silvestri, James [james.silvestri@hpe.com]
Subject: RE: Original importation documentation for CWG TCS equipment returning from lease.
Attachments: Tata Consultancy 2751012690_schedule 1_OUT.XLS

Hello again Sanjaykumar.

This is just a diary follow-up to check on progress of us obtaining copies of the relevant IMPORT documentation related to the Comm Games/TCS H3C Network equipment.

At this

You will

number

document

IEIPL/

IEIPL/

IEIPL/DEL/16-11/090

It has been 3 weeks since we commenced the request for the relevant importation documents that you indicated you have.

Regards

Bevan Goodwin

API Enterprise

Technology Value

PH +61 3 8434166; Cell +61 (0) 432 814 008

Place your Trade-in & Buyback requests here - www.hp.com/apac/buyback

Place your Recycle requests here - www.hp.com/apac/recycle

From: Goodwin, Bevan
Sent: Friday, 25 March 2011 1:38 PM
To: 'Sanjaykumar Dhoot'
CC: Bartley, Kevan; Harris, Tom
Subject: Original importation documentation for CWG TCS equipment returning from lease.

Hello Sanjay and thank you for your kind assistance with this end-of-lease project.

Attached is a list of the network assets that were acquired for TCS/CWG on lease contract - 2751012690IMDSVAS1A1

These assets appear to have been returned to the lease return processing centre in India and we are now ready to start the Remarketing phase.

Origination of the Equipment (Defendants' counsel's statements, 2019)

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GIBBONS
Paul A. Sisk
Gibbons P.C.
One Pennsylvania Plaza
27th Floor
New York, NY 10119-1021

VIA ELECTRONIC MAIL

Dimitry Joffe, Esq.
Joffe Law P.C.
765 Amsterdam Avenue, 2c
New York, New York 10023

Re: Styler, et al.,
(D. Mass.) Civil

Dear Dimitry,

I write to memorialize our meet-and-confer telephone conference on September 23, 2019. In those instances where I note below that Defendants will endeavor to produce any responsive documents that are

I. Plaintiffs

As an initial matter, I note that on July 12, 2019, I received a letter from you regarding a potential renewed motion to compel production of documents from your client, Defendants. I stated that that is not a proper subject for this court, and that I would refer the matter to the court's custodians. I am responsive, non-partisan, and according to the court's characterization of the matter.

In addition, I note that the court's custodians were

as the produced emails that you reference in the July 12 letter indicate, Defendants requested importation documents from Inspira multiple times in 2011, and Inspira was not responsive to those requests. We also reiterated that because the documents you seek are likely in Inspira's

have knowledge or documents not in Defendants' possession. Furthermore, our understanding is that TT Global did not perform any authentication testing on the equipment.

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GIBBONS

Paul A. Sisk
Gibbons P.C.
One Pennsylvania Plaza
27th Floor
New York, NY 10119-1021
Direct: 212-410-1717 Fax: 212-190-2019
psisk@gibbons.com

October 1, 2019

VIA ELECTRONIC MAIL

Dimitry Joffe, Esq.
Joffe Law P.C.
765 Amsterdam Avenue
New York, New York 10023

Re:

Dear Dimitry,

I write to you regarding your letter of September 23, 2019, in which you requested that I

2(i):

2(ii):

in documents. Accordingly, we believe that they are not within Defendants' possession, custody or control.

2(iii): Defendants have not located the spreadsheet attached to the exact August 8, 2011 email that you reference in your letter. However, as you note, Defendants have produced multiple spreadsheets that list the equipment. See, e.g., DEF 976. Defendants do not object to producing this exact email attachment to the extent it is located.

2(iv): The only written "results" of any "audit," "testing," or "inspection" performed by TT Global, and in Defendants' possession, custody or control, are the spreadsheets that have already been produced by Defendants. There are no further documents for Defendants to produce.

2(v): Plaintiffs are today producing an earlier email in the email chain that you reference in your July 12 Letter at ¶¶ 2(v), (vii) and (viii). The email being produced today includes the pictures that are referenced in the email chain previously produced by Defendants.

2(vi): See 2(iv) above.

HPFS India's March 2013 draft letter to the PSB

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Inspira was instructed to invoice HPFS India for the equipment, HPFS India purchased the equipment and simultaneously leased it to Tata Consultancy. HPFS India did not play any role in selecting the equipment and did not inspect the equipment prior to or during the lease. This is the customary

+91 80 704 1270 Telephone
+91 80 704 1061 Fax

was seized. After the equipment had been seized, H3C inspected the equipment and advised the police that it believed that the equipment was counterfeit based on the logos found on the equipment.

25 March 2013

ADDRESS

RE: EQUIP

("HPFS INDIA") TO ICT COMPANY ("ICT")

Dear Sir/M

HPFS India

connection

In the inter

between H

Background

HPFS India

of Hewlett

The object

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Transaction

Background

The Comm

Gains the

Consultanc

Tata Cons

services. Tata Consultancy ordered the required equipment from Inspira Enterprise Private Limited

("Inspira").

Tata Consul

Inspira was

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finance sou

HPFS India immediately commenced investigating the matter. H3C inspected the seized equipment on behalf of HPFS India and also obtained lists of the seized equipment from the [insert name of relevant China police entity]. HPFS India compared this data against its data for the Sold Equipment. Based on the available evidence HPFS India believes that the counterfeit H3C equipment seized in China is the same equipment sold by HPFS to ICT (through Shinto).

HPFS India has also viewed photos of the Sold Equipment taken prior to its import into China. These photos were obtained from ICT's USA office and from the company HPFS India engages in India to process and refurbish returned lease equipment. Based on these photos it appears that the logos currently affixed to the Sold Equipment were present on the Sold Equipment at the time of the sale from HPFS India to ICT. Copies of the relevant photos obtained are attached as Annex D.

assume that it was buying genuine equipment. Based on the available evidence it would appear that, the relevant counterfeiting activities occurred at some point in time prior to the return of the Sold Equipment to HPFS India upon the expiration of the Leases. HP is

HPFS India's April 2013 final letter to the PSB



It is reported that ICT arranged for the Sold Equipment to be imported into China; certain employees of ICT have been incarcerated by Public Security Bureau in China due to allegedly selling counterfeit H3C products. Furthermore, the relevant equipment was seized. After the equipment had been seized, H3C inspected this equipment and, based on the logos found on the equipment, believed that this equipment was counterfeit products.

2013年4月

致：北京市海淀区公安部门

关于 HEWLETT-PACKARD FINANCIAL SERVICES (INDIA) PRIVATE LIMITED (简称“HPFS INDIA”) 面向 ICT

HPFS India

HPFS India

为了配合

明如下：

HPFS India 背景信息

HPFS India 和杭州华三通信技术有限公司 (简称“H3C China”) 均为 Hewlett-Packard Company 直接或间接控股的全资子公司。

HPFS India

履行此函

HPFS India immediately started the investigation of this matter. H3C inspected the seized equipment on behalf of HPFS India and also obtained a partial list of the seized equipment from the Beijing City Haidian District Public Security Bureau. HPFS India compared this data against its

photos, the logos attached to the Sold Equipment were similar to the logos attached to the part of the seized equipment. Copies of the relevant photos are attached as Annex D.

HPFS India 与 ICT 之间的交易

HPFS India

2010 年

Consultancy

Tata Consultancy

信息技术部

Based on the current evidence and HPFS India further investigation, part of the Sold Equipment supplied by Inspira did not come from HP Company. In order to clarify, HPFS India hopes to

Tata Consultancy 基于商务上的考虑，决定通过 HPFS India，以租赁的方式获得这些设备。因此，根据合同安排，HPFS India 作为出租人，直接向 Inspira 购买该设备，Inspira 并向 HPFS India 开具设备发票。同时，HPFS India 将设备租赁给 Tata Consultancy 使用。根据所有 IT 租赁行业的惯例，租赁公司在交易过程中仅扮演“被动财务”的角色，承租人实际负责订购、检查、安装设备等工作及事宜。HPFS India 在此次交易中并没有参与任何设备挑选工作，在租赁之前或租赁过程中也没有检查设备。

HPFS India 和 Tata Consultancy 共计达成 4 笔租赁交易 (简称“租约”)，如下所示：

09

对“北京程于团伙售假案件”查扣光模块鉴定材料

H3C
并。

Transceivers seized from the “Sales of Counterfeit Products by Chengyu Gang in Beijing Case” were compared in terms of product packaging and product appearance with authentic H3C products. It has been found out that the vast majority of the seized transceivers are different from our genuine ones. The identification results conclude trademark infringement with details as follow:

(一) 产品包装对比
1、H3C 产品外包装情况：

电港
装名

Basically, all of the more than 700 seized transceivers have one or multiple of the above abnormalities (inconsistency with the original products). Due to limited identification time, the accurate statistics of the above various abnormalities are not summarized. However, this does not affect the overall identification conclusion of the seized products, that is, the above labels (including anti-counterfeit labels) are abnormal, which is sufficient enough to determine that at least most of these seized transceivers are counterfeit H3C products.

the seized products was conducted. Judging from the physical characteristics of a large number of tested items, one can conclude that the batch of seized product has different external appearances with various counterfeiting tracks. It is pointless to test the electrical performance of these obvious counterfeits; hence these were not conducted on the seized products.

H3C 品牌主机、硬盘和光模块防伪公告 V1.1

To protect the interests of consumers, maintaining market order and prevent counterfeit products disrupt the normal market competition mechanism, Hangzhou H3C Technologies Co., Ltd. (H3C) announced that the use of security labels on H3C brand host, hard drives and optical module products (2010 5 Since switching from the old anti-counterfeit labels for the new month on the 10th security label).

The equipment upgrade security labels and technology, will make it easier for consumers to identify the authenticity of the H3C products, to better protect the legitimate rights and interests of consumers against infringement.

Old and the new security labels security labels contrast as follows:

图
案

14124083

本文主要介绍 H3C 品牌

1、主机、硬盘验证

1.1、主机、硬盘所
体如下图：



右边

注：老版防伪标签

1.2、主机、硬盘所使用的新版防伪标签和老版防伪标签，均含有明码和暗码（涂层覆盖），可以到下述链接输入 H3C 序列号（条码）、防伪明码、防伪暗码进行防伪验证：

条码防伪查询：<http://channel.h3c.com/channel/system/SearchTrueCode.jsp>

具体查询方式，请参见该页面的辅助说明。

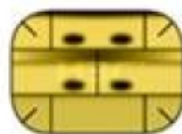
2013-09-29

H3C 品牌，未经许可不得转载

第 1 页，共 4 页

2, the Optical module authentication Methods:

2.1, the new anti-counterfeit labels optical modules used, from a different perspective, you can see the different points, specifically the following figure:





I. Range of Application for Anti-Counterfeit Labels:

For your legal benefits and to prevent counterfeit H3C products from disturbing the market order, New H3C Technology Co., Ltd. ("H3C") is putting anti-counterfeit labels on the body of partial H3C products from May 10, 2010:

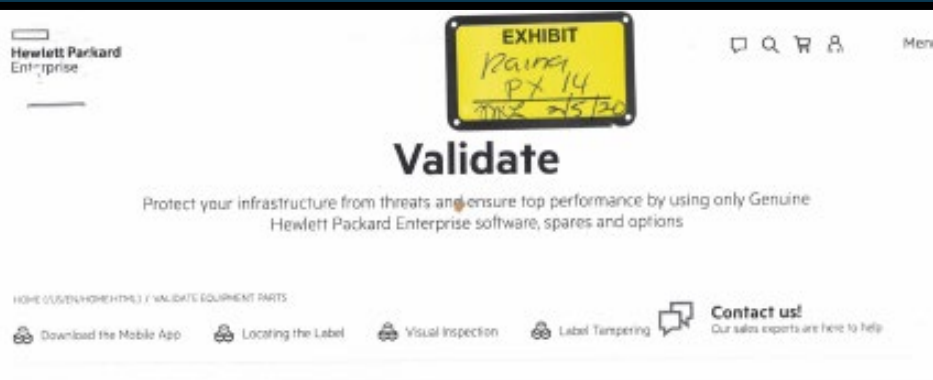
1. **Anti-counterfeit label-A** shall be put on the body of H3C hosts (for Chinese version and Chinese-Foreign version only, other than the English version and VIP version).
2. **Anti-counterfeit label-B** shall be put on the body of H3C optical modules (for Chinese version and Chinese-Foreign version only, other than the English version and VIP version).

2. Anti-counterfeit label-B:

2.1 Anti-counterfeit label-A bears a holographic H3C logo at its center, in which the number of reflection points varies from angle to angle, as shown in the figure below:

			
Viewed from the right 5 reflection points	Viewed from the left 5 reflection points	Viewed from above 4 reflection points	Viewed from the front 4 reflection points

Defendant HPE's Validation guide (2020)



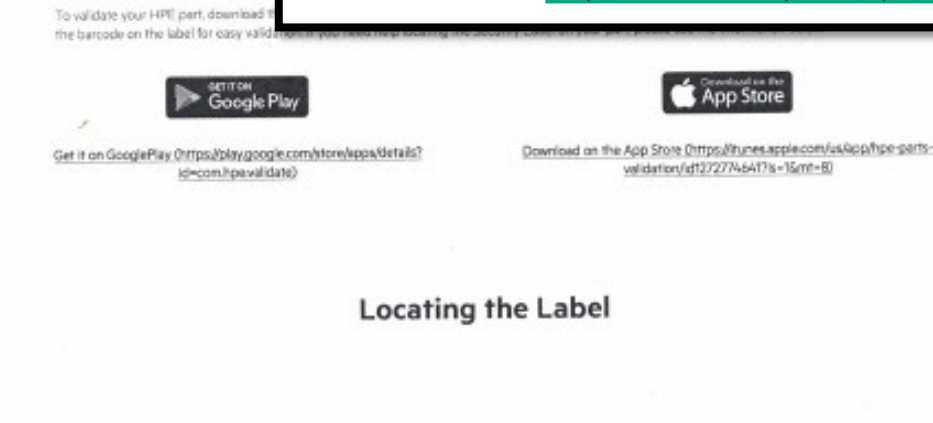
Risks of Counterfeit HPE Software, Spares & Options

HPE starts with the highest quality components, risk with Original Equipment Manufacturers (OEM) create specific HPE firmware, drivers, and software that provide optimized performance and manageability. Around the world, a number of fraudulent HPE parts are being represented as new HPE product. These parts are packaged as HPE Option Kits and Spares. HPE is providing these look and information allow validation of authentic HPE parts.

Visual Inspection - Label Hologram

To help prevent Security Labels from being counterfeited, HPE uses a two-factor authentication system. The Security ID can be validated at the top of this web page, and the hologram can be validated with the guidelines here.

Additional hologram images and details can be found on these pages regarding Security Labels found on Genuine HPE drives (http://h20564.www2.hpe.com/hpsc/doc/public/display?docId=emr_na-c00832103&sp4ts.oid=4304942) and memory (http://h20565.www2.hpe.com/hpsc/doc/public/display?sp4ts.oid=33729&docId=emr_na-c00691020).



Defendant HPE's Verification guide (2019)


Hewlett Packard
Enterprise



(Revision) Verification of Authentic HPE Universal Hard Drives (SAS, SATA, FATA, SCSI, iSCSI, Fibre Channel), and Solid State Drives (SSDs)

DESCRIPTION

Document Version	Release Date	Details
7	05/09/2019	Updated with the latest security labels.
6	11/22/2016	Updated with the latest security labels.

HPE also includes a serial number on each Option Kit package that is linked to the number printed on the label. Beware that it is a common practice for counterfeiters to "reuse" serial numbers listed on the packaging (and often on the invoice) and the number printed on the product label in an effort to convince a customer that the product is authentic. The serial number is not intended to be used for product validation.

The latest HPE security label, which began in April 2019, has the following security features:

Security strip has florescent holograms for authentication:

To verify that HPE drives are authentic, use the information provided in the Details section below.

Note: Information on verification of older labeling and packaging of Compaq Parallel SCSI hard drives is available in the following document (c00833220):

(Revision) Verification of Authentic Compaq Universal SCSI Hard Drives
http://h20565.www2.hp.com/hpsc/doc/public/display?calledBy=Search_Result&docId=emr_na-c00833220&docLocale=en_US

DETAILS

Verification of Authentic HPE Universal Hard Drives

Mr. Raina's Expert Report

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALEXANDER STYLLER, INTEGRATED
COMMUNICATIONS & TECHNOLOGIES,
INC., JADE CHENG, JASON YUYI, CATHY
YU, CAROLINE MARAFIO CHENG,
PUSHUN CHENG, CHANGZHEN NI,
JUNFANG YU, MEIXIANG CHENG,
FANGSHOU YU, and CHANGHUA NI

Plaintiffs,

vs.

HEISE FEE BACKARD FINANCIAL

Civil Action No. 1:16-CV-10386 (LTS)

REBUTTAL EXPERT REPORT OF
SHELLEY RAINA REGARDING
THE AUTHENTICITY OF THE
SEIZED EQUIPMENT

67. *Importantly*, the mere fact that every one of the 647 transceivers contains a unique serial number is itself evidence that they are all authentic. As I explained above, counterfeiters typically copy-and-paste serial numbers across large batches of their counterfeit transceivers. The

Respectfully submitted this 15th day of January, 2020:



CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Mr. Raina's Testimony

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Q. In general, do you agree that a fake logo is an indicator of counterfeiting?

A. No.

COMMUNICATIONS & TECH
INC., JADE CHENG, JADE
CATHY YU, CAROLINE MA
CHENG, MUSHEN CHENG, C
NT, JUNGANG YU, MELIA
CHENG, FANGXU YU, an
CHANGDA NT,

Plat
BY
HEWLETT-PACKARD FINAN
SERVICES COMPANY
HEWLETT-PACKARD FINAN
SERVICES (INDIA) PRIV
LIMITED, SP. INC. H
PACKARD ENTERPRISE CO
and DAVID GILL,

Defa

DEPOSITION of
called on behalf of t
pursuant to the appli
the Federal Rules of Civil Procedure, before
Marie C. Leonard, Registered Professional
Reporter, Certified Shorthand Reporter
No. 146796, and a Notary Public in and for
the Commonwealth of Massachusetts, at the
offices of Choate Hall & Stewart LLP,
Two International Place, Boston,
Massachusetts, on Wednesday, February 5, 2020,
commencing at 9:30 a.m.

MARY K. CONCORAN
Professional Court Reporter
M. Weymouth, MA 02194
fatfugra@yahoo.com 781-258-5431

Q. Right. So just the fact that the transceiver carries a counterfeit logo would not lead you to a conclusion that the transceiver is counterfeit?

A. That is correct.

Mr. Raina's Testimony

Q. Yeah. So in your analysis, the results put in the appendix, you're saying that the transceiver itself is authentic, but you express no opinion whether the logo attached to that transceiver is authentic or counterfeit?

A. I did not analyze the labels.

So this goes back to the point I was making earlier. Labels can be counterfeited. That has no bearing on whether the product that the label is applied on is counterfeit or genuine. That is why, in my experience, and

Dr. Fang's Expert Report



Massachusetts Institute of Technology
Department of Mechanical Engineering

Nicholas X. Fang
Professor

77 Massachusetts Avenue, Building 3-449
Cambridge, Massachusetts 02139-4307
617.253.2247 (office)
nifang@mit.edu

Expert Report of Nicholas Xuanlai Fang, Ph.D.

Date:

Styller, et al. v. Hewlett-Packard

Title:

I	Qualifications
II	Assignment
III	Documents and Materials
IV	Summary of Opinion
V	Testing Methodology
VI	Facts and Data Considered
VII	Summary of Findings
VIII	Conclusion

It is my opinion that the majority of the hologram labels inspected (343 of 394, or 87.1%) show indicators of counterfeiting described in the H3C security bulletin and the verification report.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness I would testify competently thereto.

Dated: December 16, 2019
Boston, Massachusetts

Signed:


Nicholas Xuanlai Fang

Destruction of TT Global transceivers – Defendants' emails, 2013

Message

From: West, Ross [mailto:ROSS@TTG.COM/CC=MPAC/OU=MP2/CN=RECIPROITY/CN=WESTROSS]
Sent: 5/20/2013 4:58:29 AM
To: O'Grady, Jim [mailto:jim.ograde@ttg.com]; Bertley, Kevan [mailto:kevan.bertley@ttg.com]; Silvestri, James [mailto:james.silvestri@ttg.com]
Subject: RE: TT-G Dubai Assets

Jim, let's clear this up when you, IT and I are together in Andover next week. Regards, Ross.

Ching and David from legal have been working with the brand protection team and whilst there hasn't been a concrete determination as to the authenticity of the assets, the advice that we are getting is that the origination of the equipment is questionable, and as such, we should not allow TT-G to re-sell what they purchased from us. As a result, TT-G will be out of pocket and it is fair to say would be looking to us to make them whole. Nothing has been committed to TT-G, hence wanting to get your acknowledgement that this is the correct course of action before instructing TT-G to destroy the equipment.

Please acknowledge that you agree that we should work with TT-G to ensure they are not financially impacted by this.

Kevan

Andover, MA 01810
Phone: (978) 474-3588

From: Bertley, Kevan
Sent: Tuesday, May 07, 2013
To: West, Ross; O'Grady, Jim
Subject: FW: TT-G Dubai

This would obviously would be a Ross call due to financial impact. My gut says we should fully refund due to questionable nature of product.

Hi Ross/Jim

This is in relation to the returns.

Note sure is with have any recourse to pursue upstream

You may be aware that for approx. USD 200k, TT we asked TT-G to hold a

Ching and David from legal determination as to the is questionable, and as is out of pocket and it is fair hence wanting to get go the equipment.

Regards,
Jim

Please acknowledge that you agree that we should work with TT-G to ensure they are not financially impacted by this.

Confidential

DEF00011843

Trademark counterfeiting law in China

Case 1:16-cv-10386-LTS Document 331-13 Filed 04/16/20 Page 2 of 3

Written Opinion Recommending Prosecution

Made by PSB

To: Haidian Procuratorate (or P

Criminal Suspects:

Yuyi, Gender:Male, Date:
Shandong Province,Education:
Residence on ID Card: No. 689
ID Card No. 3706821198610362
by the police because of selling
was arrested after Haidian Procu

Yu Xiaomeng, G
1th,1990,Nationality:Han,Birthpla
College education, Registered
Hailiang City, Shandong Provin
criminal detention on Dec. 10th
counterfeited registered tradem
approval on Jan. 15th,2013.

Cheng Yongguo, Ge
Nationality:Han Birthplace: G

Degree: 中文版

Shenzhen

criminal

counter

approval

Abc

Dec.9th

were un

detentio

We

sold tra

Room 4

The following translation was retrieved from the Fujian Provincial People's Government Web site on January 15, 2013. The Chinese text was retrieved on December 13, 2016, from the website of the Gaoxin District Branch of the Baoding Municipal Public Security Bureau in Hebei Province.

Criminal Law of the People's Republic of China

(Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, Revised at the Fifth

Article 214

Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount of sales is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Amendment VII, adopted at the 7th Meeting of the Standing Committee of the Eleventh National People's Congress on February 28, 2009

Amendment VIII, adopted at the 19th Meeting of the Standing Committee of the Eleventh National People's Congress on February 25, 2011.

PSB of Beijing' s Haidian (sealed)

March 14th, 2013

Trademark counterfeiting law in the U.S.

§ 2320

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

Page 526

"When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorised copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording device or other equipment used in connection with the offense."

§ 2320. Trafficking in counterfeit goods or services

(a) OFFENSES.—Whoever intentionally—

(1) traffics in goods or knowingly uses a counterfeit mark in connection with such goods or services;

(2) traffics in labels, papers, badges, emblems, boxes, containers, cans, documentation, or packaging, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to deceive, or

(3) traffics in goods or services in which a counterfeit mark is likely to cause injury or death, the dissemination, impairment of, or other significant harm to a member of the national security,

or attempts or conspires to do so, shall be fined not more than \$5,000,000 or imprisoned not more than 10 years, or both, in accordance with subsection (b).

(b) PENALTIES.—

(1) IN GENERAL.—Whoever violates subsection (a) shall be fined not more than \$5,000,000 or imprisoned not more than 10 years, or both, in accordance with subsection (b).

(A) If an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 10 years, or both, in accordance with subsection (b).

(B) For a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(2) SERIOUS BODILY INJURY OR DEATH.—

(A) SERIOUS BODILY INJURY.—Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(B) DEATH.—Whoever knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for any term of years or for life, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(3) COUNTERFEIT MILITARY GOODS OR SERVICES.—Whoever commits an offense under subsection (a) involving a counterfeit military good or service—

(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and if other than an individual, be fined not more than \$15,000,000; and

(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$30,000,000.

(c) DEFINITIONS.—For the purposes of this section—

(1) the term "counterfeit mark" means—

(A) a spurious mark—

(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services

(C) the legal representatives of such producers, sellers, and holders.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term "counterfeit mark" means—

(A) a spurious mark—

(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services

(C) the legal representatives of such producers, sellers, and holders.

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(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services

§ 2320. Trafficking in counterfeit goods or services

(a) OFFENSES.—Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

Trademark counterfeiting law in India

Case 1:16-cv-10386-LTS Document 101-3 Filed 08/04/17 Page 1 of 14

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALEXANDER STYLLER, INTEGRATED
COMMUNICATIONS & TECHNOLOGIES,
INC., JADE CHENG, JASON YUYI, CATHY YU,
CAROLINE MARAFEO CHENG, PUSUN
CHENG, CHANGZHEN NI, JUNFANG YU,
MEIXIANG CHENG, FANGSHOU YU, and
CHANGHUA NI,

Plaintiffs,

Civil Action No. 1:16-CV-10386 (LTS)

v.

HEWLETT-PACKARD FINANCIAL
SERVICES COMPANY, HEWLETT-PACKARD
FINANCIAL SERVICES (INDIA) PRIVATE
LIMITED, HP INC., HEWLETT PACKARD
ENTERPRISE COMPANY, and DAVID GILL,

Defendants.

AFFIDAVIT OF VIVEK N. MAPURA

I, Vivek N Mapura, Age: 33 Years, Occup
(Gujarat), India, do hereby solemnly affirm and de

INTRODUCTION & STATEMENT OF FACTS

(1) I am a Practicing Advocate based in
in the "State Roll" maintained by the Bar Council
of the Advocates Act, 1961.

(2) I am enrolled as an Advocate on 9
is G/1844/2006.

(3) As per the provision made in Section 29A of the Advocates Act, 1961, I am
authorized to practice Law in all the Courts, including the
Tribunals, Judicial & Quasi-Judicial Authorities.

(4) My Education Qualifications are B.A. LL.B.
of Law (L.L.B).



¹⁶ 104. Penalty for selling goods or providing services to which false trade mark or false trade description is applied. —

Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves, —

- (a) That, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or
- (b) That, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or
- (c) That otherwise he had acted innocently,

Be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Photos of transceivers sold to ICT and shipped to China



Photos of transceivers in the PSB custody (from the H3C Verification Report)

1. A large number of the seized items are different in external appearance from our authentic transceivers



The 1 transceiver styles on the 2 sides were never used by H3C, but very common in counterfeit products made before 2008, which disappeared in the past 3 years

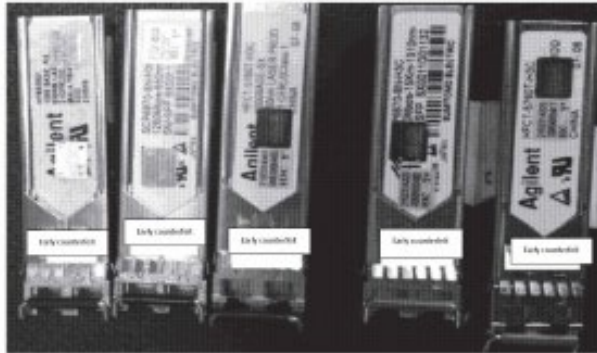


Image (5) The seized items are different in external appearance from the authentic ones [common counterfeits before 2008]

However, the labels of the seized items are in inconsistent locations and placements that vary from one another. See the images for details:

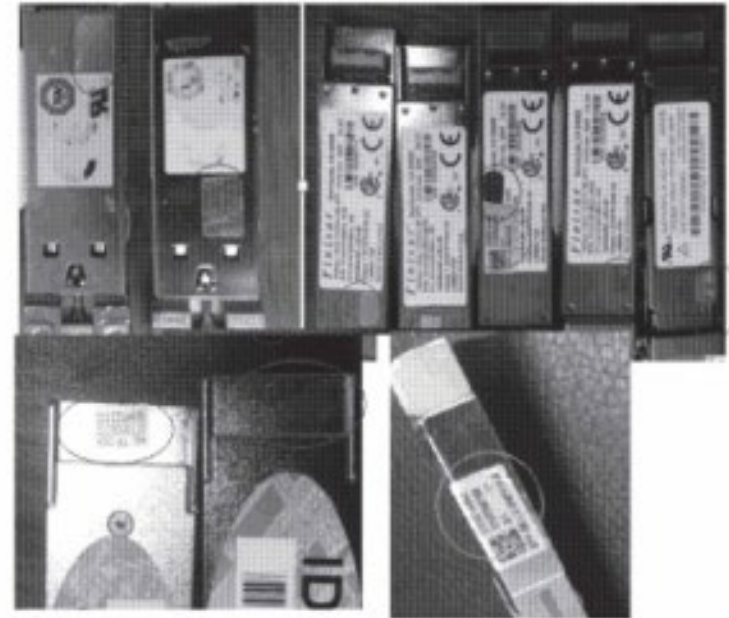


Image (6) Unorderly placing of labels on the seized products

Photos of transceivers inspected by Mr. Raina



Fig. 10



Fig. 14

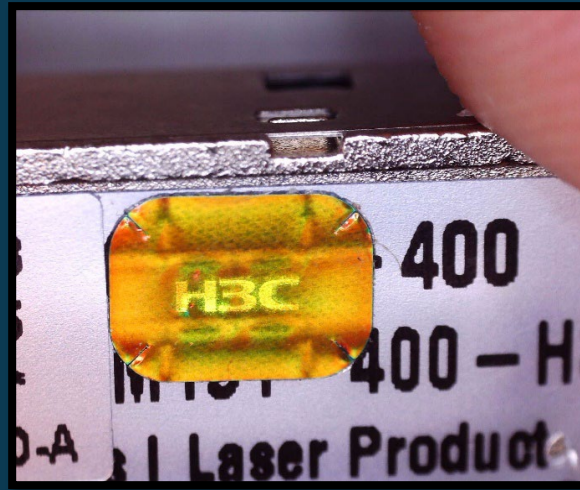
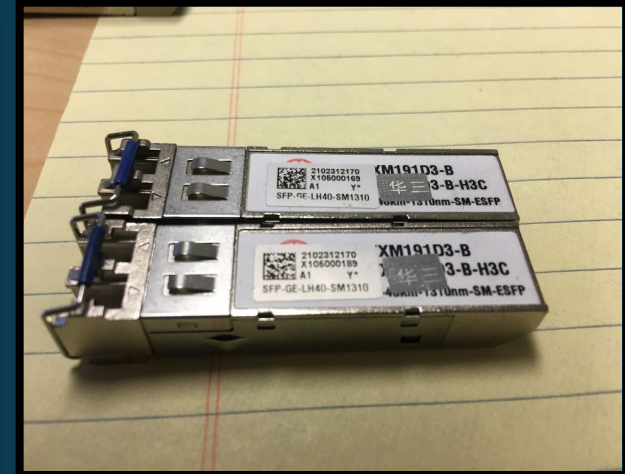
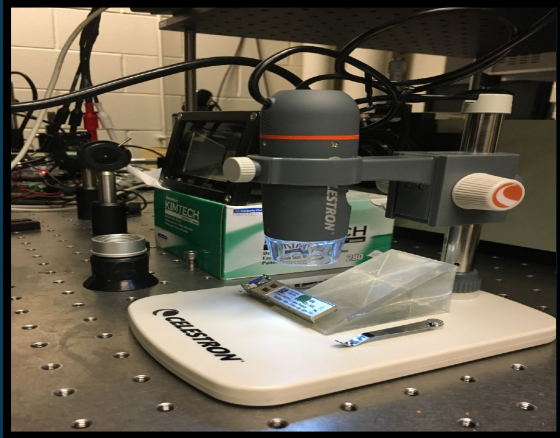


Fig. 13a

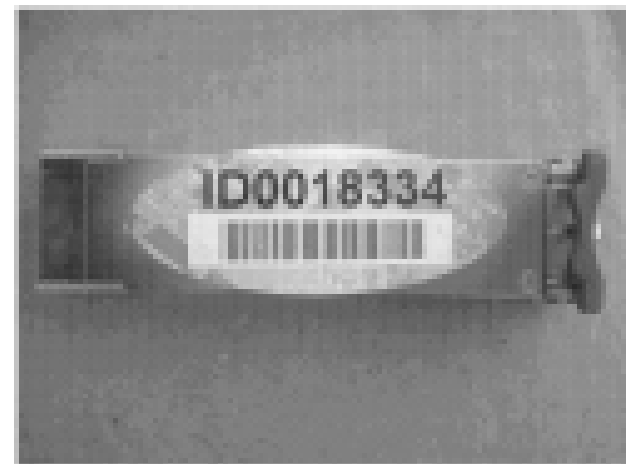
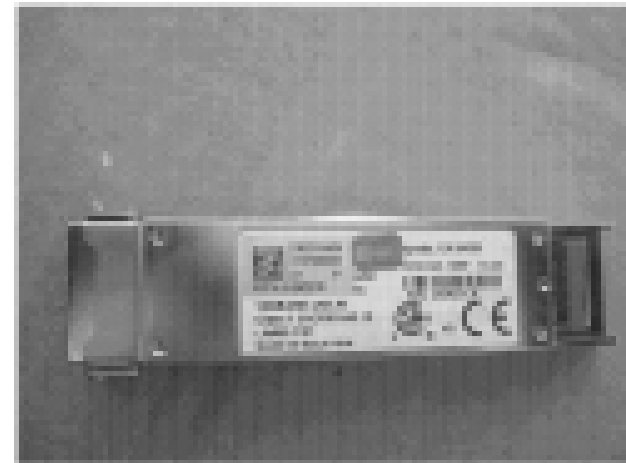
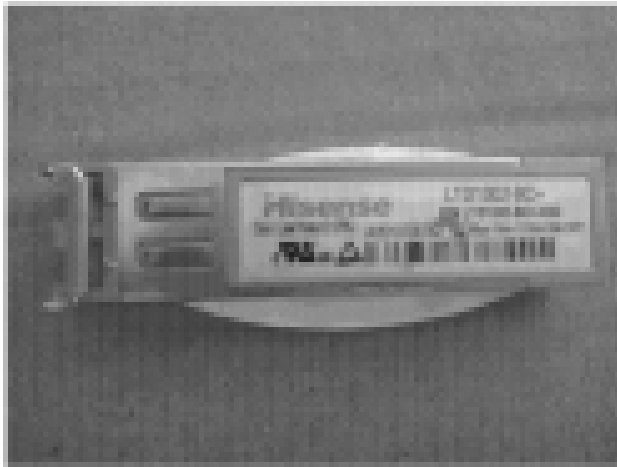


Fig. 13b

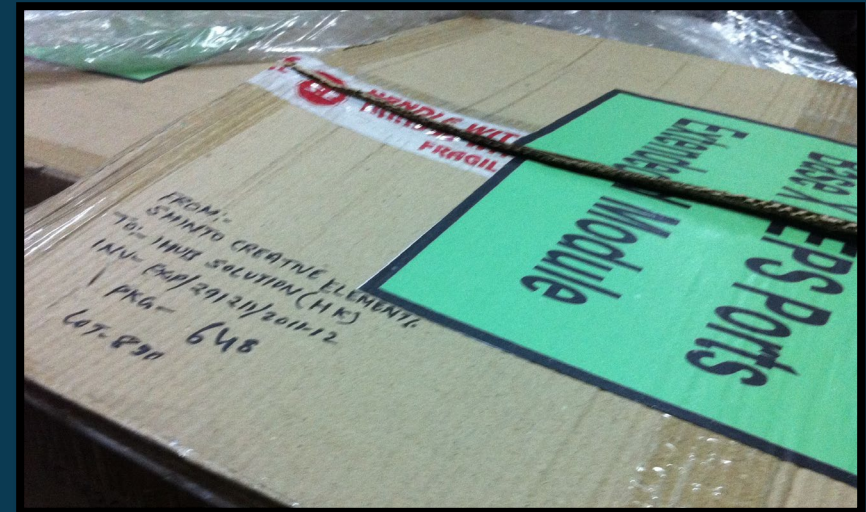
Photos of transceivers inspected by Dr. Fang



Photos of transceivers sold to TT Global and shipped to Dubai



Photos of the Equipment upon arrival in Hong Kong, February 2012



Photos of the Equipment upon arrival in Hong Kong, February 2012

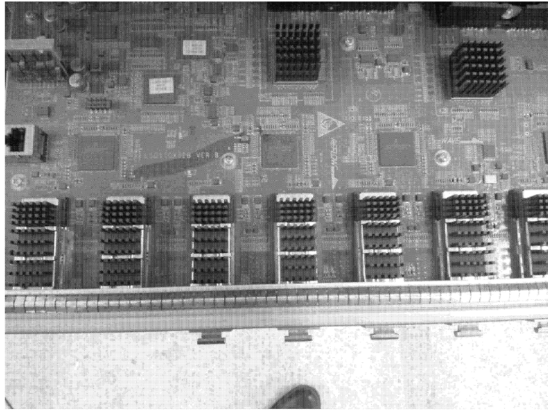


Photos of Equipment upon arrival in Hong Kong, February 2012

Case 1:16-cv-10388-LTS Document 344-5 Filed 04/30/20 Page 4 of 5



Photos of the Commonwealth Games equipment left in India, October 2012



Confidential

DEF0002881



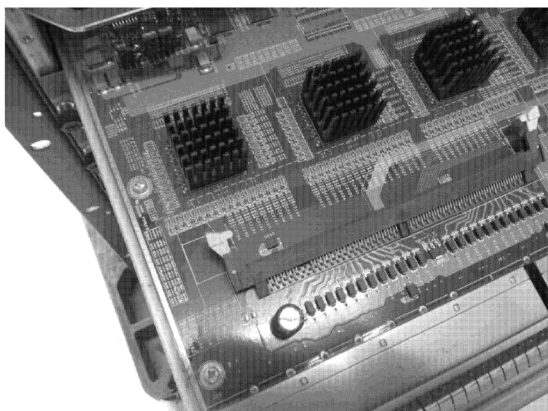
Confidential

DEF0002882



Confidential

DEF0002883



Confidential

DEF0002884



Confidential

DEF0002885



Confidential

DEF0002886

Photos of the Commonwealth Games equipment left in India, October 2012



Confidential

DEF0002897



Confidential

DEF0002898

IN CONCLUSION

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 INTEGRATED COM
5 TECHNOLOGIES,

6 Plaintiff

7 v.

8 HEWLETT-PACKAR
9 COMPANY, et al

10 Defendant
11

they're going to have to explain why -- how they square what happened -- what conclusions were reached then -- first, what conclusions they had -- their expert has now, whether it isn't just conclusions of a paid, hired gun for sure.

12 BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

13 STATUS CONFERENCE

14
15 Friday, January 11, 2019
16 2:34 p.m.

17
18 John J. Moakley United States Courthouse
19 Courtroom No. 13
20 One Courthouse Way
21 Boston, Massachusetts

22 Rachel M. Lopes, CRR
23 Official Court Reporter
24 One Courthouse Way, Suite 5209
25 Boston, Massachusetts 02210
raeuf@gmail.com

CONCLUSION

Defendants cannot square the trademark holder H3C's and their own statements made since 2013 that the transceivers are counterfeit, with their expert's current opinion that they are authentic.

CONCLUSION

Defendants had sold transceivers of unknown nature and origination to ICT (and to TT Global); made statements that the transceivers carried counterfeit H3C trademark logos (in the PSB letter and in the H3C Verification Report), and took actions consistent with transceivers' being counterfeit (instructing TT Global to destroy its transceivers).

CONCLUSION

The record shows that the transceivers sold by Defendants to ICT carry counterfeit H3C trademark logos (and Mr. Raina has nothing to say about this).

Transceivers carrying counterfeit trademark logos are considered counterfeit in China, India and the U.S.

Accordingly, there is no genuine factual dispute left for the jury, and Plaintiffs are entitled to summary judgment on the issue of counterfeiting as a matter of law.

THANK YOU

