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Attorneys for Plaintiffs
PTS Data Center Solutions, Inc.,
Andrew Graham and Peter Graham

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PTS DATA CENTER SOLUTIONS, INC.,)	
ANDREW GRAHAM AND)	
PETER GRAHAM,)	Case No.
)	
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
ARCHTECH ELECTRONICS CORP.,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs PTS Data Center Solutions, Inc. (“PTS”), Andrew Graham and Peter Graham by and through their undersigned counsel, for their Complaint against Defendant Archtech Electronics Corp. (“Defendant” or “Archtech”), allege the following upon information and belief, except as to those allegations concerning PTS, Andrew Graham and/or Peter Graham which are alleged upon knowledge. PTS, Andrew Graham and Peter Graham shall be collectively referred to as “Plaintiffs.”

THE PARTIES

1. Plaintiff PTS is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 568 Commerce St, Franklin Lakes, New Jersey 07417.

2. Plaintiff Andrew Graham is an individual residing at 80 Irving Ave, Spotswood, New Jersey 08884, and an employee of PTS.

3. Plaintiff Peter Graham is an individual residing at 29 Northwood Drive, Highbridge, New Jersey 08829, and an employee of PTS.

4. Upon information and belief, Defendant Archtech is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 117 Docks Corner Road, Suite A, Dayton, New Jersey 08810.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and further includes nonfederal claims over which this Court has pendent jurisdiction. This Court has jurisdiction over the subject matter of the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1338, 1367 and 2201.

6. This Court has subject matter jurisdiction and Andrew and Peter Graham have standing over the correction of inventorship claims asserted pursuant to 35 U.S.C. § 256 since Section 256 of title 35 provides a cause of action for judicial correction of inventorship. *See e.g. Chou v. University of Chicago*, 254 F.3d 1347 (Fed. Cir. 2001).

7. This Court has personal jurisdiction over Archtech because Archtech is doing business within this State and judicial district, transacts business within this State and judicial district, maintains its principal place of business within this State and judicial district and a

significant number of transactions and occurrences upon which Plaintiffs' claims are based took place within this State and judicial district.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to the claims occurred in this district, Archtech resides in this judicial district, and Archtech is subject to personal jurisdiction in this judicial district.

BACKGROUND FACTS

9. PTS is a global leader in the business of data center management and solutions. PTS provides, among other services, data center management solutions in all phases of a data center lifecycle. In this regard, PTS has designed and developed complex data center infrastructure and solutions including, without limitation, power, cooling, cabling, flooring, racks/cabinets, servers, SANs, switches, virtualization, monitoring, management, security, fire suppression, and applications-specific programs.

10. Andrew Graham is a Data Center Solutions Professional at PTS and is responsible for business and solution development.

11. Peter Graham is a Data Center Designer at PTS and is responsible for solution and product design.

12. Upon information and belief, Archtech is primarily in the business of manufacturing electronics components for third parties.

13. On or about May 13, 2009, Andrew Graham of PTS met with John O'Connor, Steve Hadgkiss and Robert Shanley of Bloomberg L.P. ("Bloomberg"), an existing and important client of PTS, to discuss certain problems Bloomberg was having with its cable network connections. Specifically, Bloomberg explained to Andrew Graham that its data center

network cables were becoming inadvertently disconnected during the performance of moves, additions and/or changes to the network cables. This was causing approximately one to three network outages per quarter.

14. The disconnection of the network cables was causing Bloomberg to lose important data. As a result, Bloomberg asked Andrew Graham whether PTS could create a solution that would more effectively lock the network cables in place to prevent them from becoming inadvertently disconnected.

15. In response and in attempt to solve Bloomberg's problem with inadvertent cable disconnection, Andrew Graham met with Peter Graham, a design specialist at PTS. Together, Andrew and Peter Graham developed the idea to create an RJ-45 connector with a slot in which a self-releasable support could be inserted to prevent a user from inadvertently depressing the existing locking tongue of the connector. In addition to the self-releasable support idea, they also conceived the idea of having the releasable support being releasable through the use of a key-like device. As conceived by Andrew and Peter Graham, the releasable support enters the slot in the connector and slides beneath the locking tab of the connector. The connector can only be removed if the releasable support is first removed. (The connector locking mechanism conceived by Andrew and Peter Graham shall be hereinafter be referred to as the "Graham Connector Lock.")

16. One important aspect of the Graham Connector Lock was the fact that it did not add height or width to the connector such that the connector was able to maintain the same profile (i.e. did not take up more space than the original connector). Andrew and Peter Graham also recognized that this mechanism could be applied to various types of cable connections

including RJ45 connectors and fiber optic “LC”-type connectors. During this initial phase of creation, Andrew and Peter Graham prepared at least several rough sketches of their idea.

17. In or about May 2009, Peter and Andrew Graham completed the initial design for the Graham Connector Lock.

18. In or about May and June 2009, Andrew Graham contacted cable manufacturing companies including Nexans S.A. (“Nexans”) and Panduit Corporation (“Panduit”), to gauge interest manufacturing the Graham Connector Lock on behalf of PTS. Due to other commitments, Nexans and Panduit stated they were not interested.

19. On or about June 10, 2009, Andrew Graham contacted Ernest Gutierrez, then the sales representative at defendant Archtech, to see if Archtech would be interested in manufacturing the Graham Connector Lock. Mr. Gutierrez indicated that Archtech would be interested.

20. Shortly thereafter, Andrew Graham met with Mr. Gutierrez and Paul Fong, an owner and Vice President of Archtech. At that meeting, Andrew Graham presented Messrs. Gutierrez and Fong with a Non-Disclosure Agreement (“NDA”) and they indicated that it would be signed by Archtech. In addition, at the meeting, Andrew Graham presented Messrs. Gutierrez and Fong with the sketches that Andrew and Peter Graham created of the Graham Connector Lock. Messrs. Gutierrez and Fong were impressed with the concept and expressed in an interest in collaborating on the design with the goal of manufacturing the product.

21. The NDA, which specifically mentions the RJ-45 connections at issue, was signed by PTS on July 30, 2009, and by Archtech on August 3, 2009. A copy of the NDA is attached hereto as Exhibit 1.

22. After Andrew Graham presented the idea and initial sketches to Archtech, Mr. Gutierrez and possibly others at Archtech made several suggestions as to how to improve the design and, as a result, additional sketches of the Graham Connector Lock were prepared.

23. Andrew Graham presented the sketches to Bloomberg and suggested to Bloomberg that better quality Computer Assisted Design (“CAD”) drawings of the Graham Connector Lock be prepared.

24. Shortly after presenting the initial drawings to Bloomberg, Andrew Graham asked Peter Graham to prepare better quality CAD drawings of the Graham Connector Lock, which he did.

25. The CAD drawings featuring the Graham Connector Lock were completed on or about July 1, 2009. That same day, on July 1, 2009, Andrew and Peter Graham met with Paul Fong and Ernest Gutierrez of Archtech to present the CAD drawings. At that meeting, Andrew Graham asked Mr. Fong if Archtech would agree to have a prototype of the Graham Connector Lock made in Taiwan. Mr. Fong responded that he would, provided that PTS and/or Bloomberg agree to cover the costs to have tooling made for the prototype.

26. On July 2, 2009, Andrew Graham and Mr. Gutierrez presented the CAD drawings to PTS’s customer, Bloomberg. The disclosure of the drawings (and other confidential information) to Bloomberg was subject to a separate non-disclosure agreement between PTS and Bloomberg. Bloomberg was impressed with the concept but requested that a few minor changes be made to the design. Specifically, Bloomberg asked whether the key-like device for the releasable support could be made longer and Andrew Graham and Mr. Gutierrez said that it could. Over the next few of weeks, Andrew Graham, Peter Graham and Ernest Gutierrez at

Archtech worked together fine-tuning the design to Bloomberg's satisfaction including elongating the key-like tool.

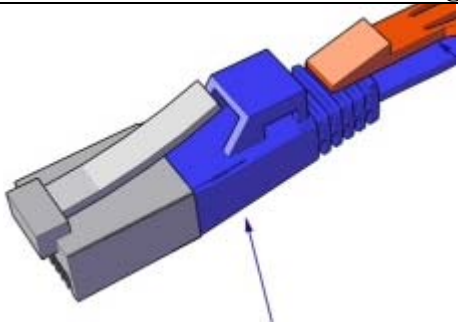
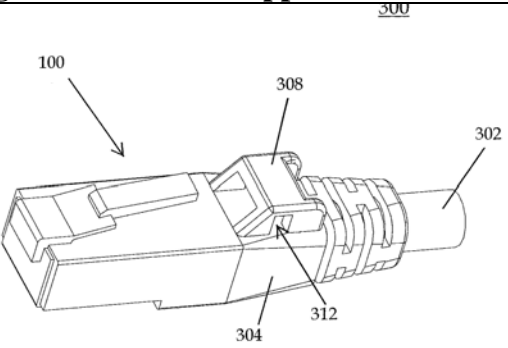
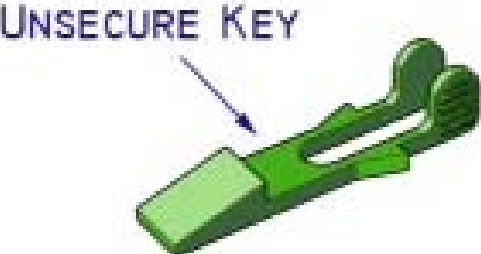
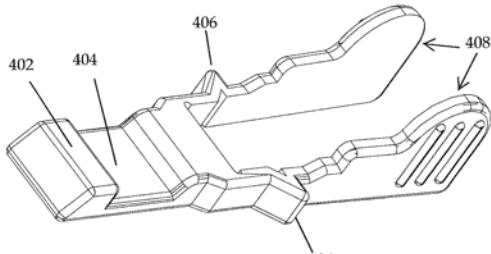
27. During the relevant period herein, PTS informed Archtech, by e-mail and/or oral communication, that all ideas, concepts and drawings, including the CAD drawings, relating to the Graham Connector Lock were confidential.

28. Shortly thereafter, the prototype for the Graham Connector Lock was completed in Taiwan and submitted to Bloomberg for their approval, which they approved.

29. Meanwhile and unbeknownst to PTS, Andrew Graham, or Peter Graham, on August 24, 2009, less than two months after the idea of the Graham Connector Lock was presented to Archtech by Andrew and Peter Graham and less than a month after Archtech signed the NDA, Archtech filed U.S. Patent Application No. 12/546,270 (the "270 Application") entitled "Connector Locking Device." The '270 Application named Paul Fong as the sole inventor.

30. The '270 Application was based, at least in substantial part, on the ideas and concepts contributed by Andrew and Peter Graham and shared with Archtech under the protection of the NDA.

31. The drawings contained in the '270 Application are nearly identical to the CAD drawings originally created by Peter Graham and provided to Archtech. Below is a side by side comparison of Figures 3 and 4B of the '270 Application and excerpts from the CAD drawing prepared by Peter and Andrew Graham.

<p>Peter/Andrew Graham's CAD Drawing</p> 	<p>Figure 3 of the '270 Application</p> 
<p>Peter/Andrew Graham's CAD Drawing</p> <p>UNSECURE KEY</p> 	<p>Figure 4B of the '270 Application</p> 

32. The '270 Application issued as U.S. Patent No. 7,892,012 (“the ‘012 Patent”) on February 22, 2011. Attached hereto as Exhibit B is a copy of the ‘012 patent.

33. On February 7, 2011, again unbeknownst to PTS, Andrew Graham or Peter Graham, Archtech filed U.S. Patent Application No. 13/022,400 (the “400 Application”) as a divisional of the ‘270 Application (now the ‘012 Patent). The ‘400 Application also names only Paul Fong as the sole inventor.

34. The ‘400 Application, which shares the same relevant drawings and a substantially identical specification as the ‘270 Application, was similarly based, at least in substantial part, on the ideas and concepts conceived by Andrew and Peter Graham and shared with Archtech pursuant to the NDA.

35. The '400 Application issued as U.S. Patent No 7,976,329 ("the '329 Patent") on July 12, 2011. Attached hereto as Exhibit C is a copy of the '329 patent. The '012 Patent and '329 Patent shall collectively be referred to as the "Accused Patents."

36. Most, if not all, of the elements of the independent claims of the Accused Patents read directly on the CAD drawings created by Peter and Andrew Graham and presented to Archtech on or about July 1, 2009.

37. Upon information and belief, Mr. Fong assigned his entire interest in the Accused Patents to Archtech, which is the sole assignee of the Accused Patents.

38. In or about October 28, 2009, PTS and Archtech's business relationship was formalized by virtue of a purchase order that PTS issued for the costs of the prototype and for an initial order of 5,000 units of the final version of the Graham Connector Lock which would be manufactured by Archtech in Taiwan. As part of that arrangement and recognizing the substantial contribution by Andrew and Peter Graham to the design and development of the Graham Connector Lock, Archtech agreed to sell the Graham Connector Lock to PTS at preferred pricing. It was understood that PTS would re-sell the Graham Connector Lock to PTS's customers, including Bloomberg. It was also understood between PTS and Archtech that Archtech would not unilaterally contact PTS's customers, including Bloomberg. It was also understood that Archtech would supply PTS with a discount on the Graham Connector Lock over the price it charged any third parties. This fact is supported by the NDA.

39. At about this time, Archtech branded the finalized version of Graham Connector Lock with the name "NetLock."

40. The business relationship between Archtech and PTS continued from October 2009 until approximately July 2012. During this time, Archtech continued to manufacture and

PTS continued to purchase NetLock products from Archtech at preferred pricing. PTS resold those products to its customers, including Bloomberg pursuant to an ongoing business relationship with Bloomberg.

41. In or about March 2012, PTS suspected that Archtech was in discussions to manufacture and possibly sell NetLock products at preferred pricing for other companies besides PTS including a company called ComNet Communications, LLC (“ComNet”). Based on that suspicion, PTS confronted Archtech and asked if Archtech received any requests to sell NetLock products to ComNet. Archtech told PTS it would not supply products to ComNet since ComNet had hired away some of Archtech’s employees so Archtech had no interest in doing business with ComNet.

42. Despite those statements by Archtech, in or about March 2013, PTS discovered that Archtech had been selling NetLock products to third parties including ComNet. PTS also learned that, unbeknownst to PTS, ComNet was reselling the Archtech supplied NetLock products directly to PTS’s customer, Bloomberg. Upon information and belief, Archtech knew that ComNet was reselling the NetLock products to Bloomberg.

43. From 2012 to 2013 sales of NetLock products by PTS to Bloomberg declined dramatically. In or about April 2013, Bloomberg stopped buying NetLock from PTS entirely. Upon information and belief, Bloomberg stopped buying products from PTS since, among other reasons, it could obtain those products from ComNet (via Archtech) at a cheaper price.

44. As a result of Archtech selling NetLock products to ComNet, PTS lost substantial business from its customer Bloomberg.

45. In April 2013, Andrew Graham, on behalf of PTS, confronted Archtech about its improper conduct.

46. On April 25, 2013, counsel for Archtech responded in a letter to Andrew Graham (the “April 25 Letter”). The April 25 Letter threatened “legal action” against PTS and Andrew Graham unless they stopped “interfere[ing] with Archtech’s business relationships with regard to its sales of its patented NetLock Products.” Upon information and belief, the NetLock products are covered by the Accused Patents.

47. As a result of the threats contained in the April 25, 2013 letter from Archtech’s counsel as well as the existence of the Accused Patents for the NetLock products owned solely by Archtech, PTS was forced to suspend all current plans to sell, market and/or manufacture the NetLock products.

COUNT I
**(Declaratory Judgment for Correction of Inventorship under 35 U.S.C. § 256,
Alleged by Andrew and Peter Graham against Archtech)**

48. Andrew and Peter Graham restate and reallege the preceding paragraphs of this Complaint.

49. Andrew and Peter Graham contributed in a significant manner to the conception and reduction to practice of at least one element of one claim of each of the Accused Patents. Their contributions included more than the mere explanation of well-known concepts or the current state of the art.

50. Andrew and Peter Graham’s contributions to the invention(s) as claimed in the Accused Patent are not insignificant when measured against the dimension of the full invention.

51. Andrew and Peter Graham were omitted as named co-inventors of the Accused Patents.

52. The error of omitting Andrew and Peter Graham was done without any deceptive intention on Andrew and Peter Graham’s part.

53. This Court has the authority to order the Director of Patents to correct the inventorship of an issued patent pursuant to 35 U.S.C. § 256 since Section 256 of title 35 provides a cause of action for judicial correction of inventorship.

54. Therefore, the Court should order the Director of Patents to issue a certificate correcting the Accused Patents to include Andrew and Peter Graham as co-inventors.

COUNT II
**(Declaratory Judgment of Patent Invalidity under 35 U.S.C. §§ 102(f) and 256,
Alleged by Plaintiffs against Archtech)**

55. Plaintiffs restate and reallege the preceding paragraphs of this Complaint.

56. Andrew and Peter Graham contributed in a significant manner to the conception and reduction to practice of at least one element of one claim of each of the Accused Patents. Despite this, Archtech filed for and obtained the Accused Patents, but did not name Andrew and Peter Graham as co-inventors. If the Accused Patents cannot be corrected to include Andrew and Peter Graham as co-inventors, the Accused Patents should be declared invalid under 35 U.S.C. § 256.

57. Absent correction of inventorship, the Accused Patents are invalid under 35 U.S.C. § 102(f) which provides that a patent cannot be obtained if the named inventors did not themselves invent the subject matter claimed. The Accused Patents omit Andrew and Peter Graham as co-inventors, and, instead, list Paul Fong as the sole inventor.

58. Due to the above facts and absent correction of inventorship, the Accused Patents should be declared invalid under 35 U.S.C. §§ 102(f) and/or 256.

COUNT III
**(Breach of Contract (NDA),
Alleged by PTS against Archtech)**

59. PTS restates and realleges the preceding paragraphs of this Complaint.

60. The NDA states in the preamble that it “describes the rights and obligations of each party hereto with respect to confidential information that may be provided by each party to the other regarding discussions and services pertaining [to]sic Field Terminated Locking RJ45 Patch Cords.”

61. In the NDA, “Confidential Information” is defined as including “(1) business strategies, plans[,]sic methods and practices; (2) personnel, customers and suppliers; (3) inventions, processes, methods, patent applications and other proprietary rights; (4) requirements, technical specifications, drawings, records, data, computer programs, application software, schematics, know-how, notes, models, samples tools, videotapes, technical information or all other information regardless of the medium in which it is contained.”

62. The NDA requires that any “Confidential Information” transmitted by one party to the other be used “only for purposes of work, services or analysis related to the matter of mutual interest described above and for other purposes only upon such terms as may be agreed upon between the parties in writing[.]”

63. The NDA prohibits disclosure of “Confidential Information to others (to include consultants, advisors and other such entities and persons which are not full-time, regular employees of Recipient).”

64. Archtech breached the NDA by disclosing Confidential Information provided by PTS, including drawings and other communications relating to the Field Terminated Locking RJ45 Patch Cords, to third parties, including the United States Patent and Trademark Office and ultimately the public at large, without the consent of PTS.

65. Archtech further breached the NDA by utilizing Confidential Information provided by PTS, including drawings and other communications relating to the Field Terminated

Locking RJ45 Patch Cords, for purposes, such as, among other things, application of patents, that were contrary to the permissible uses described in the NDA, and were not agreed upon between the parties.

66. As a consequence of Archtech's breach of the NDA, PTS has been damaged in an amount to be proven at trial.

COUNT IV
**(Tortious Interference with
Prospective Business Relations,
Alleged by PTS against Archtech)**

67. PTS restates and realleges the preceding paragraphs of this Complaint.

68. PTS had an ongoing business relationship with its customer, Bloomberg, with respect to the NetLock products and had a reasonable expectation of future economic advantage with Bloomberg as to the NetLock products.

69. Archtech was aware of the ongoing business relationship between PTS and Bloomberg.

70. Archtech began selling NetLock products to ComNet with the knowledge and understanding that ComNet would resell those products to PTS's customer, Bloomberg.

71. By selling the products to ComNet, Archtech caused Bloomberg to stop doing business with PTS with respect to the NetLock products.

72. Archtech's tortious interference is a result of and exacerbated by the fact that Archtech sent the April 25, 2013 letter threatening legal action against PTS and improperly obtained a patent covering the design of the NetLock products thereby preventing PTS from competing with Archtech for Bloomberg's business.

73. Upon information and belief, Archtech's interference was intentional, without justification and were committed with malice, willfulness and the intent to interfere with PTS's prospective business relationship without justification.

74. Archtech's interference with PTS's prospective business relations with Bloomberg has caused PTS to suffer damages in an amount to be determined at trial.

COUNT V
(Unjust Enrichment,
Alleged by Andrew and Peter Graham against Archtech)

75. Andrew and Peter Graham restate and reallege the preceding paragraphs of this Complaint.

76. Archtech has been unjustly enriched by the novel concepts and ideas provided to it by Andrew and Peter Graham, which were illicitly utilized by Archtech to apply for and obtain issuance (and ownership) of the Accused Patents. As a consequence of ownership, Archtech is further unjustly enriched by sales of products covered by the Accused Patents, which, upon information and belief, include Archtech's NetLock Products, and any profits earned thereby, whether directly or indirectly, with knowledge that the Accused Patents were conceived, in substantial part, by Andrew and Peter Graham.

77. Nevertheless, Archtech has failed to compensate Andrew and Peter Graham for the value of the Accused Patents including, without limitation, sales of NetLock Products, and have been unjustly enriched as a consequence.

COUNT VI
(Misappropriation of Idea,
Alleged by Andrew and Peter Graham against Archtech)

78. Andrew and Peter Graham restate and reallege the preceding paragraphs of this Complaint.

79. Andrew and Peter Graham communicated to Archtech novel concepts and ideas conceived by them, including, among other things, drawings, related to locking connectors. The communications were subject to an NDA which was intended to keep such communications confidential. Archtech improperly used those confidential and novel concepts and ideas by applying for and obtaining a patent without the knowledge or consent of Andrew and Peter Graham.

80. As such, Archtech has misappropriated ideas of Andrew and Peter Graham, who have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, PTS, Andrew Graham and Peter Graham prays for judgment and relief as follows:

A. A judgment declaring that Andrew and Peter Graham are co-inventors of the Accused Patents;

B. A judgment ordering the Director of the United States Patent and Trademark Office to issue a certificate correcting the inventorship of the Accused Patents, adding Andrew and Peter Graham as co-inventors;

C. Preliminarily and permanently enjoining Archtech from enforcing the Accused Patents against PTS, Andrew and Peter Graham and their licensees;

D. In the alternative to A and B, a judgment declaring that the Accused Patents are invalid and/or unenforceable under 35 U.S.C. §§ 102(f) and/or 256.

E. A judgment awarding PTS damages for breach of a contract (NDA) in an amount to be proven at trial;

- F. A judgment awarding PTS damages for tortious interference with prospective business relations in an amount to be proven at trial;
- G. A judgment that Archtech has been unjustly enriched, and compensating Andrew and Peter Graham for the reasonable value of Accused Patents, including, without limitation, sales of NetLock Products by Archtech , said value to be proven at trial;
- H. A judgment that Archtech has misappropriated ideas of Andrew and Peter Graham, and compensating Andrew and Peter Graham for the reasonable value of the ideas;
- I. A judgment awarding PTS, Andrew and Peter Graham exemplary and punitive damages;
- J. An order, pursuant to 35 U.S.C. § 285, that Archtech pay Plaintiffs, either individually or collectively, their reasonable attorneys' fees in connection with this action;
- K. A judgment that costs of this action be awarded to Plaintiffs, either individually or collectively;
- L. An order that Archtech pay Plaintiffs' prejudgment and post-judgment interest at the highest statutory rate on Plaintiff's damages, costs and attorneys' fees; and
- M. An order awarding Plaintiffs, either individually or collectively, such other and further relief as may be deemed by this Court to be just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues so triable.

Dated: October 16, 2013

Respectfully submitted,

By: s/ Andrew P. Nemiroff

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Andrew Graham and Peter Graham

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

Pursuant to L. Civ. R. 11.2, I hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. Notwithstanding, similar issues regarding inventorship and validity of the Accused Patents are the subject of a pending matter captioned *Archtech v. Gutierrez*, 12-cv-01812 pending before Judge Sheridan in the District of New Jersey, Trenton Division.

Dated: October 16, 2013

Respectfully submitted,

By: s/ Andrew P. Nemiroff

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