# SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

**DEPARTMENT S-21 HON. RICHARD R. ROMERO, JUDGE**

**THE PEOPLE OF THE STATE OF CALIFORNIA, )**

**)**

**PLAINTIFF, )**

**) NO. NA 093179**

**VS. )**

**)**

**01 – MARTELL CHUBBS, )**

**)**

**DEFENDANT. )**

 **)**

**DECLARATION OF BRIAN E. FERGUSON IN SUPPORT OF DEFENDANT’S RENEWED MOTION TO COMPEL PRODUCTION**

**OF SOURCE CODE FOR THE TRUEALLELE SOFTWARE PROGRAM**

I, Brian E. Ferguson, declare I have personal knowledge of the following, and if called upon to do so, could and would testify competently to the matters herein.

1. I am a partner in the law firm Weil, Gotshal & Manges LLP. My office address is 1300 Eye Street, N.W., Washington, D.C. 20005.
2. I am the co-chair of our firm’s Patent Litigation Practice Group. I have been practicing intellectual property law continuously for 24 years. Much of my practice involves patent disputes in the areas of computing devices such as personal computers, smart phones, tablets, routers, and related hardware/software.
3. Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of a paper entitled *Patents or Trade Secrets?,* published by the World Intellectual

Property Organization (“WIPO”). I downloaded a copy of the article from WIPO’s website on May 18, 2015. The URL is: [http://www.wipo.int/sme/en/ip\_business/trade\_secrets/patent\_trade.htm.](http://www.wipo.int/sme/en/ip_business/trade_secrets/patent_trade.htm) WIPO is a global

forum for intellectual property services, policy, information and cooperation. It is a self-funded agency of the United Nations, with 188 member states.

1. Attached hereto and incorporated by reference herein as Exhibit B is a true and correct copy of United States Patent No. 8,898,021 (“the 021 patent”), issued by the United States Patent and Trademark Office (“PTO”) on November 14, 2014 and entitled “Method and System for DNA Mixture Analysis.” Mark W. Perlin of Pittsburgh, PA (“Perlin”) is named as the sole inventor on the cover of the 021 patent.
2. The record of proceedings between the PTO and Perlin, called the 021 patent’s “file history” or “prosecution history” is a publicly-available document. I obtained a copy of the file history and reviewed it. The file history is over 1,400 pages long. I have selected relevant documents from the file history and attach them hereto as Exhibits C, D, E, F, and G, as described in more detail in paragraphs 6-10 below.
3. Attached hereto and incorporated by reference herein as Exhibit C is a true and correct copy of a communication from the PTO in the 021 patent file history, referred to as an “Office Action,” dated January 9, 2008.
4. Attached hereto and incorporated by reference herein as Exhibit D is a true and correct copy of Perlin’s “Response” to the January 9, 2008 Office Action, dated July 11, 2008.
5. Attached hereto and incorporated by reference herein as Exhibit E is a true and correct copy of another Office Action from the PTO, dated December 9, 2013.
6. Attached hereto and incorporated by reference herein as Exhibit F is a true and correct copy of Perlin’s Amendment and Response to the December 9, 2013 Office Action, dated June 9, 2014.
7. Attached hereto and incorporated by reference herein as Exhibit G is a true and correct copy of a Declaration Under 37 CFR 1.132 signed by Perlin and dated June 6, 2014. This declaration accompanied the June 9, 2014 Amendment and Response.
8. Attached hereto and incorporated by reference herein as Exhibit H is a true and correct copy of a page entitled “TrueAllele® Casework” taken from Cybergenetic’s website that I downloaded on May 22, 2015. The URL is: <http://www.cybgen.com/products/casework.shtml>.

I understand that Perlin is the founder of Cybergenetics and identifies himself as the creator of the TrueAllele® technology.

1. Attached hereto and incorporated by reference herein as Exhibit I is a true and correct copy of the Patent Rules established as part of the United States District Court for the Eastern District of Texas’s Local Rules.
2. Attached hereto and incorporated by reference herein as Exhibit J is a true and correct copy of the Patent Rules established as part of United States District Court for the Southern District of California’s Local Rules.
3. Attached hereto and incorporated by reference herein as Exhibit K is a true and correct copy of the United States District Court for the District of Delaware’s Default Standard for Access to Source Code in Patent Cases.
4. Attached hereto and incorporated by reference herein as Exhibit L is a true and correct copy of a Protective Order entered by the United States District Court of the Eastern District of Texas in the case *Mobile Telecommunications Technologies, LLC v. Apple Inc*., Case

No. 2:13-cv-258-JRG-RSP, ECF No. 85. I was counsel for Apple in this matter. The Protective Order contains explicit provisions concerning the production and protection of source code. *See* pp. 5-8.

1. Attached hereto and incorporated by reference herein as Exhibit M is a true and correct copy of a Protective Order entered by the United States District Court of the Eastern District of Virginia in the case *Hill-Rom Co., Inc. v. General Electric Co.*, Case No. 2:14-cv- 00187-RGD-LRL, ECF 74. I was counsel for General Electric in this matter. The Protective Order contains explicit provisions concerning the production and protection of source code. *See* pp. 15-25.

I declare that the above is true and correct under penalty of perjury pursuant to the laws of the State of California, executed this day of May, 2015, at Washington, D.C.

 */s/Brian E. Ferguson*

Brian E. Ferguson