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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTBI, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>RESPONSE OF COUNSEL FOR DEFENDANTS TO RECEIVER’S THIRD QUARTERLY STATUS REPORT (Doc. 724)</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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INTRODUCTION

Receiver Wayne Klein, by and through his attorneys, on July 18, 2019, filed Receiver’s Third Quarterly Status Report (Document 724) with the Court, hereinafter referred to as the “Report”. The Report contains a number of erroneous statements regarding counsel for

Defendants, Nelson Snuffer Dahle & Poulsen, P.C., (“NSDP”) for which irrefutable documentation had been provided to the Receiver prior to the release of the Report. It is noted that the Report indicates that it is for the time period of April 1, 2019 to June 30, 2019. Giving the Receiver the benefit of the doubt, that he felt that it was inappropriate to include information in the Report that was provided to him after June 30, 2019, i.e. July 10, 2019, it is nevertheless necessary for NSDP to attempt to avoid any misconceptions that the Court might reach based upon information contained in the Report. Furthermore, NSDP respectfully asserts that a number of the statements made by the Receiver are insupportable, based upon a reasonable review and analysis of the records he received prior to June 30, 2019 and purportedly relied upon.

CLIENT TRUST IAS SHARES TO NSDP

IAS was first approved by the SEC for over-the-counter public trading in 1988. Beginning in 2002, and perhaps as early as 2000 although no records have been found to confirm that earlier time period, IAS, which was almost entirely engaged in research and development (“R&D”) at the time, requested that NSDP accept, in lieu or partially in lieu of direct cash payment, IAS restricted shares which could be sold over time, subject to strict SEC Regulations, with the proceeds placed in Client Trust to pay for previously accrued and accruing fees and costs. Despite the inherent difficulties, inconveniences, and delays associated with the arrangement, and despite the concerns of NSDP regarding compliance with U.S. Securities and Exchange Commission (“SEC”) regulations and reporting requirements, NSDP agreed to receive the shares and to place them with a stock broker for sale. The proceeds were to be used to pay not only fees and costs of NSDP, but certain fees and costs of certain other law firms who

provided services to IAS. For example, payments were made to Jones Waldo Holbrook & McDonough, Salt Lake City, Utah, prior patent counsel for IAS; Anderson & Karrenberg, Salt Lake City, Utah, SEC counsel for IAS; Fenwick & West, San Francisco, California, patent litigation co-counsel for IAS in the case of *IAS v. IBM et al*, U.S. District Court for the District of Utah, Central Division, Case No. 2:06-CV-00115-BJ, and in the case of *IAS v. Microsoft et al*, U.S. District Court for the District of Utah, Central Division, Case No. 2:06-CV-00072-DB, patent infringement litigations in 2006-2009; and Snow Christensen & Martineau, criminal defense counsel for IAS, Salt Lake City, Utah. All of the foregoing was under the continuing scrutiny of IAS auditors, and the share transactions were under the scrutiny of the U.S. Securities and Exchange Commission.

The earliest records NSDP has of IAS shares being placed by NSDP with a broker for sale was in June, 2002, when shares were placed with Salomon Smith Barney. *Exhibit NSDP-1*. Despite the fact that records from 2002, seventeen (17) years ago, would normally have been shredded, NSDP had both IAS stock sale records and Client Trust records dating back to 2002. From the beginning of that arrangement, all shares were sold by licensed brokers, with all proceeds deposited in the NSDP Client Trust on behalf of IAS. The brokers were:

Salomon Smith Barney	2002-2003
Emmett Larkin	2003-2009
Sterne Agee (Successor of Emmett Larkin)	2009-2010
Wilson Davis	2010-2011
Alpine Securities	2011-2019

The first sales by Salomon Smith Barney were on October 23, 2002. *Exhibit NSDP-2*. The last sales were on or about July 10, 2012 by Alpine Securities. *Exhibit NSDP-3*. Shares remaining with Alpine Securities from 2012 to 2019 were surrendered to the Receiver on March 15, 2019.

Exhibit NSDP-4. Stock sales documentation for each of the foregoing brokers for the years 2002 to 2012, as well as documentation of no sales for 2013-2019 has been provided to the Receiver. *Exhibits 1-7, 10-11, 27, 31, and 46-61 to Receiver-not attached.* As stated previously, because IAS was a publicly traded company, all of the foregoing was under the continuing scrutiny of IAS auditors, and the share transactions were under the scrutiny of the U.S. Securities and Exchange Commission. *See examples Exhibit NSDP-5.*

The proceeds were used to pay legal fees and costs incurred. The costs included, for example, court costs for litigation, expert witness fees, patent filing and prosecution fees paid to the USPTO and international patent offices, patent maintenance and renewal fees paid to the USPTO and international patent offices, and international associate patent counsel. Complete copies of the NSDP Client Trust ledgers for IAS from 2002 to 2019 have been provided to the Receiver. *Exhibits 8-9, and 29-30 to Receiver-not attached.* The shares sales documentation and the NSDP Client Trust ledgers verify that all IAS shares sales revenue was deposited in NSDP Client Trust on behalf of IAS.

The Receiver refers to and appears to rely upon a Pacific Stock Transfer Company (“PSTC”) tabulation for a determination of the shares purportedly issued to NSDP. *Exhibit NSDP-6.* As this was not the transfer agent that was handling the issuance and transfer of IAS shares, NSDP does not know where PSTC got the information. As NSDP has indicated to the Receiver, NSDP respectfully suggests that a closer examination of the PSTC tabulation itself will contradict many of the conclusions reached by the Receiver.

Initially, it appears that most of the stock certificate numbers listed are simply certificate numbers assigned to residual shares from original certificates after a portion of the

shares are registered and made available for sale. For example, the PSTC tabulation identifies 5,000,000 with certificate CS1-4779 and indicates that it was issued on July 2, 2001. The PSTC tabulation lists Certificate CS1-5006 for 4,900,000 shares with an issue date of July 15, 2002. These are the same shares, apparently with 100,000 shares having been sold. Those 5,000,000 shares were placed with Salomon Smith Barney in June 2002. *Exhibit NSDP-1*. The 2,643,000 residual shares remaining from that original certificate were transferred to Emmet Larkin on October 10, 2003. *Exhibit NSDP-7*. Those 2,643,000 shares from the original 5,000,000 share certificate CS1-4779 were identified as certificate CS1-5267 dated August 1, 2003. Assuming that the PSTC information is otherwise correct, it appears that the general practice was that each time a portion of the shares from an original certificate was registered as unrestricted, a new certificate number was assigned for the remaining shares. This is manifestly clear for certificates CS1-5006-CS1-5345 which represent successive certificates for residual shares as the shares are sold from the original 5,000,000 share certificate. It is apparent that these are residual share certificates, as there are a steadily decreasing number of shares for each successive share certificate. There were no shares certificates ever delivered to NSDP for 4,900,000 - 4,785,000 - 4,783,000 – 4,753,000 . . . shares. These are merely a declining balance of the same shares. The certificates are just instruments used by the transfer agent to account for the residual or divisional shares as no new share certificates were delivered to NSDP. Furthermore, once the residual 2,643,000 shares were transferred to Emmett Larkin in October, 2003, it appears clear that certificates CS1-5345 to CS1-5917 and CS1-5930 are certificates for portions of those residual shares.

The same is true of Certificate 4517. Certificates 4551-4915 all appear to be residual or divisional certificates for the shares of 4517.

Again, the same appears true of the shares represented by apparent original certificate CS1-5928, which PSTC reports as being issued on September 18, 2007. It appears that certificates CS1-5969 to CS1-6244 are residual shares or portions of the original share certificate CS1-5928.

We assert that the PSTC tabulation and the stock sales documentation provided to the Receiver for the years 2002-2013, as well as the non-sale documentation for the years 2013-2019, confirms that there were, at most, 17,125,000 shares, as represented by original share certificates issued to NSDP between 2000 and 2011 as described below. As further described below, 1,000,000 of the shares were transferred to Monte Hamilton, 500,000 of the shares were transferred to Matthew Wooley, as instructed by IAS, and 3,500,000 of the shares were surrendered to the Receiver in 2019. That leaves, at most, 12,125,000 shares received in Client Trust and sold, with the proceeds deposited in Client Trust on behalf of IAS.

The Client Trust shares issued to NSDP include, at most, the following:

(1) CS1-4517 for 400,000 shares apparently authorized by the Board of Directors of IAS on August 21, 2000 with a stated issue date of August 30, 2000. *Receiver's Exhibit 2 for the Receiver's June 3, 2019 RFI to NSDP-not attached.* NSDP have not been able to locate a copy of this purported share certificate and NSDP has found no other records that allow NSDP to confirm receipt of these shares or the receipt of any proceeds from the sale of these shares. This was **19 years ago** and NSDP cannot confirm receiving anything as a result of this action taken by the board.

(2) CS1-4596 for 100,000 shares with stated issue date of November 16, 2000.

Receiver's Exhibit 2 for June 3, 2019 RFI to NSDP-not attached. NSDP has not been able to locate a copy of this purported share certificate and NSDP has found no other records that allow us to confirm receipt of these shares or the receipt of any proceeds from the sale of these shares. This was **19 years ago** and NSDP cannot confirm receiving anything as a result of this action taken by the board.

(3) CS1-4779 for 5,000,000 shares apparently authorized by the Board of Directors on June 12, 2001, with a stated issue date of July 2, 2001. *Receiver's Exhibit 2 for June 3, 2019 RFI to NSDP-not attached.* Although NSDP has not been able to find a copy of this share certificate, NSDP does have confirmation of the 5,000,000 shares provided to Salomon Smith Barney in June 2002, as stated in the documentation provided to them. *Exhibit NSDP-1.*

(4) CS1-5804 for 500,000 shares having an apparent issue date of September 7, 2006. *Receiver's Exhibit 2 for June 3, 2019 RFI to NSDP-not attached.* This share certificate apparently replaced CS1-5803, which was canceled. *Exhibit NSDP-8. Exhibits 48-50 to the Receiver for July 10, 2019 Response to June 21, 2019 RFI to NSDP- not attached.* NSDP does not have a copy of CS1-5804. It is believed that there is some question about the issuance of CS1-5804 since no copy accompanies our copy of the correspondence, while a copy of CS1-5807 does.

(5) CS1-5807 for 500,000 shares having an apparent issue date of September 12, 2006. *Exhibit 2 from Receiver for June 3, 2019 RFI to NSDP-not attached, and Exhibit 51 and Exhibit 50 to the Receiver-not attached.*

(6) CS1-5851 for 625,000 shares apparently authorized by the Board of Directors on August 28, 2006, with a stated issue date of February 15, 2007. *Exhibit 3 from Receiver for June 3, 2019 RFI to NSDP-not attached, and Exhibit 52 to the Receiver-not attached.*

(7) CS1-5298 for 5,000,000 shares apparently authorized by the Board of Directors on October 13, 2006, with a stated issue date of September 18, 2007. *Exhibit 2 from Receiver for June 3, 2019 RFI to NSDP-not attached, and Exhibit 53 to the Receiver-not attached.*

(8) CS1-6232 through CS1-6241, 500,000 shares each for a total of 5,000,000 shares (*less 1,500,000 as discussed below*), apparently authorized by the Board of Directors on July 7, 2011, with a stated issue date of September 15, 2011. *Exhibit 2 from Receiver for June 3, 2019 RFI to NSDP-not attached, and Exhibit 54 to the Receiver-not attached.* However, it must be noted that 1,500,000 shares of the foregoing, namely the shares represented by CS1-6239, 6240 and 6241, were traded for the 1,500,000 shares of CS1-6244 identified below. *Exhibit 55 to Receiver-not attached.*

(9) CS1-6244 for 1,500,000 shares received in trade from Energizing Concepts, LLC, for the 1,500,000 shares of CS1-6239, 6240 and 6241 identified above. *Exhibit 2 from Receiver for June 3, 2019 RFI to NSDP-not attached, and Exhibit 55 to Receiver-not attached.*

On June 23, 2003, 500,000 shares were transferred to Matthew Wooley and 1,000,000 shares were transferred to Monte Hamilton, pursuant to IAS's instructions. *Exhibit 56 to Receiver-not attached.*

The other share certificates listed by PSTC are for residual shares or portions of the shares included in the foregoing original certificates. Assuming the shares for certificates identified above were actually issued by IAS and received by NSDP, including the questionable

CS1-4517, CS1-4596, and CS1-5807 certificates, and deducting the 3,500,000 shares transferred to you, and the 1,500,000 shares transferred to Mr. Wooley and Mr. Hamilton, that leaves a maximum of 12,125,000 shares received and sold by NSDP over the time period from 2000 through 2012.

In summary, the PSTC tabulation is clearly an unreliable source of information for the Receiver to rely upon for the conclusions stated in the Report about NSDP. In particular, his assertion that the PSTC tabulation shows 90,760,300 shares sold by NSDP, is an obvious overstatement that results in shares identified in residual and divisional share certificates being counted multiple times.

Detailed transaction information regarding shares received and held by NSDP in Client Trust is contained in Exhibit 57 to the Receiver for share transaction related documents for Wilson Davis; in Exhibit 58 to the Receiver for share transaction related documents for Alpine Securities; in Exhibit 59 to the Receiver for monthly statements for Emmett Larkin for 2003-2009, and Emmett Larkin 1099's for 2003, 2006 and 2009; in Exhibit 60 to the Receiver for monthly statements and 1099's for Sterne Agee for 2009-2010; and in Exhibit 61 to the Receiver for the quarterly statements and 1099's for Wilson Davis for 2010-2011. *Exhibits 57-61 to Receiver-not attached.*

The Receiver appears to be trying to create an impression that NSDP somehow received a windfall or some advantage or benefit beyond payment for fees and costs, from the IAS Client Trust shares. In fact, the opposite is true. As discussed above, the shares were all restricted, and so had to be registered in small blocks of shares and then sold. The time required for the process often resulted in substantial delays in payment for services and costs. For example, at the time

the patent infringement lawsuit of IAS against Optimal Robotics was settled in 2004, NSDP had accrued over \$150,000.00 in invoiced but unpaid fees and costs in prosecuting that lawsuit on behalf of IAS, which had accrued over several months. *Exhibit 29 to Receiver-not attached.* In addition, approximately \$55,000.00 in unpaid expert witness fees were accrued and unpaid. *Exhibit 29 to Receiver-not attached.* The time expended by the attorneys and staff at NSDP to deal with the formalities of the share transactions was mostly unbilled and uncompensated. Accordingly, it was a distraction from other work.

The willingness of NSDP to accept the very inconvenient and undesirable arrangement regarding the receipt of IAS shares was driven entirely by professional and ethical motives and not by financial motives. The firm was very busy with the work of other clients prior to beginning work for IAS and doubtless would have remained so if it had elected to decline IAS's request to accept shares in trust. Nevertheless, NSDP was pleased to have an opportunity to work with IAS and Mr. Johnson as the many technology concepts of Mr. Johnson were pursued to patenting and subsequent R&D.

The Receiver erroneously states:

As noted in the table above, Nelson Snuffer may have sold as many as 90,760,300 shares. The Receiver's information is still incomplete, but he has so far identified \$3,347,595.95 in deposits to the Nelson Snuffer trust account that appear to be the proceeds of sales of IAS stock issued to the law firm between January 2002 and February 2009. This is in addition to the \$1.2 million in stock sales between 2009 and 2012.

The Receiver is referring to the Table page 20-21 of the Report, which he identifies as Sales of IAS Stock by Insiders. Not only has unequivocal evidence been provided to the Receiver that a maximum of 12,125,000 shares were received and sold by NSDP over the time period from 2000

through 2012, there is absolutely no evidence that NSDP was an “Insider.” Not one attorney or other staff person of NSDP ever attended or participated in any Board of Directors Meeting or any Shareholders Meeting of IAS. Not one attorney or other staff person of NSDP was ever asked to attend any Board of Directors Meeting or any Shareholders Meeting of IAS. Not one attorney or other staff person of NSDP ever possessed or exercised any authority in regard to any decision making process of IAS. To the contrary, NSDP had to repeatedly affirm that attorney Nelson, the attorney at NSDP in whose name the NSDP shares were issued, was never a control person. Further, no attorney or staff person at NSDP played any role in the timing or quantities of sales of shares by any of the brokers identified above. No “inside” information was ever provided to any of the brokers. Each of the brokers decided on the timing and quantities of sales completely independent of and completely without input from any attorney or staff person at NSDP. Still further, as counsel for the Receiver is undoubtedly well aware, the professional liability insurance carriers of NSDP have always prohibited the service of the attorneys or other staff persons at NSDP in a control position of any client. In Annual Statements to Auditors provided by NSDP (likely as well by other law firms providing services to IAS), routine statements were made that NSDP only provided services as requested. This firm did not advise the Board of Directors during their decision making. We do not know if any legal counsel did.

The Receiver has further erroneously stated:

The Receiver had previously learned of more than nine million shares of IAS stock that IAS issued to the law firm Nelson Snuffer. Over five million of these shares were sold by Nelson Snuffer between 2009 and 2012,²⁴ giving Nelson Snuffer more than \$1.2 million in cash. Nelson Snuffer used the proceeds from these sales to pay legal fees owed to it and to pay other law firms.

The amounts received from share sales and deposited in Client Trust for IAS has been unequivocally verified by the monthly or quarterly statements from each of the brokerage companies. The total amounts for each year are:

2002	Salomon Smith Barney	\$ 53,483.26
2003	Salomon Smith Barney	127,702.92
	Emmett Larkin	23,823.54
2004	Emmett Larkin	149,852.01*
2005	Emmett Larkin	531,749.18
2006	Emmett Larkin	1,122,006.76
2007	Emmett Larkin	691,521.52
2008	Emmett Larkin	450,928.65
2009	Emmett Larkin	173,294.93
	Sterne Agee	182,775.72
2010	Sterne Agee	73,355.80
	Wilson Davis	81,691.47
2011	Wilson Davis	319,473.40
2012	Alpine Securities	258,971.25
2013-2019	Alpine Securities	<u>00.00</u>
	Total	\$4,240,630.37

* Estimated-missing monthly statements May-Sept, 2004

As stated previously, the last sale occurred in 2012, seven (7) years ago, with the payment for that last sale being received into the NSDP Client Trust Account on behalf of IAS in 2012.

The Receiver has further erroneously stated:

The IAS stock was issued to Nelson Snuffer in consideration of future legal services to be provided. Nelson Snuffer opened accounts at securities brokerage firms and sold the shares through those brokerage firms. The Receiver has so far identified over \$4.5 million deposited into the Nelson Snuffer trust account between 2002 and 2015, mostly

from sales of restricted IAS stock.²⁵ Nelson Snuffer retained the proceeds from those stock sales and paid itself—and others—from those proceeds.

The first sentence contradicts the statements of the Receiver elsewhere in the Report. As the Receiver is well aware, proceeds from the sale of shares were also to be used for payment of previously incurred fees and costs. According to the documentation still existing after all these years, the amount received and deposited in Client Trust for IAS from the sales of shares between 2002 and 2012 is \$4,240,600, as itemized above. It must be remembered that three complex and very costly patent infringement lawsuits were filed and prosecuted on behalf of IAS during that time period. NSDP handled the first of the three (*IAS v. Optimal Robotics*) as sole counsel for IAS, but Fenwick & West was associated as Co-counsel for the latter two patent infringement cases. It will be noted that substantially more than one-half of the share sale proceeds were received and deposited in Client Trust during the years that the latter two patent infringement lawsuits were pending (2006-2009).

The Receiver has been provided unequivocal documentation that no sales occurred after 2012 and no deposits were made for share sales proceeds after 2012. In regard to the Receiver's assertion that NSDP "retained the proceeds", as the Receiver is well aware, the proceeds were deposited in Client Trust the same as any other retainer that would have been received by NSDP or any other law firm. All payments issued to NSDP from Client Trust were for completed and invoiced services or accrued and invoiced costs, as authorized by IAS. All payments issued to other law firms were for services or costs, only as directed by IAS. The proceeds of the share sales were never treated any differently by NSDP than any other retainer received from any client. The retained IAS shares as well as the share sale proceeds deposited in Client Trust were

always treated by NSDP as the property of IAS. That was repeatedly confirmed in reports to the auditors who performed the audits for IAS SEC compliance. The ethical standards imposed by the Utah Bar, as well as the legal standards imposed by Utah law, were complied with at all times.

The Receiver further erroneously states:

The process of IAS issuing enormous blocks of stock to Nelson Snuffer had the effect of Neldon Johnson and other Receivership Defendants being able to consume prodigious amounts of legal services without incurring any costs for those services. Part IX, below, contains a more extensive discussion of stock issued to Nelson Snuffer and other insiders of the Receivership Defendants.

This is a gross mischaracterization of the facts. In referring to “enormous blocks of stock,” the Receiver must be persisting in his gross overstatement (90,760,300 shares) of the number of Client Trust shares allegedly received by NSDP, for which he has received documentation clearly refuting the quantity. As stated above, the unequivocal documentation provided to the Receiver verifies that a maximum of 12,125,000 shares were received and sold by NSDP over the time period from 2000 through 2012. The total shares sales proceeds received by NSDP from 2002 to 2013, for which the last sale occurred in 2012, was, according to the remaining records, \$4,240,600, all of which was deposited in Client Trust on behalf of IAS. As mentioned above NSDP initiated and prosecuted three patent infringement lawsuits on behalf of IAS during this time period.

The total amounts paid to NSDP by IAS in 2002-2013 was approximately \$2,388,000.00 for invoiced fees and costs and approximately \$34,000.00 was paid for direct reimbursements of costs advanced by one its attorneys. This was an average of approximately \$200,000.00 per year for all fees and costs invoiced by the firm. It must be noted again that this includes the amounts

paid to NSDP for the Optimal Robotics patent infringement litigation in 2002-2004 (U.S. District Court for the District of Utah, Central Division, Case No. 2:99-CV-00517-PGC), and the IBM and Microsoft patent infringement litigations in 2006-2009 (U.S. District Court for the District of Utah, Central Division, Case No. 2:06-CV-00115-BJ and Case No. 2:06-CV-00072-DB). It appears that the foregoing amounts were paid from share sale proceeds deposited in Client Trust, except for \$167,000.00 paid to NSDP from the Optimal Robotics settlement as described below. It appears that NSDP was paid approximately \$2,255,000.00 from IAS Client Trust shares proceeds during 2002-2013 for fees and costs, including the three patent infringement lawsuits, except for the payment from the Optimal Robotics settlement as described above.

Examples of payments to other law firms from the share sales proceeds include the following:

Jones Waldo Holbrook & McDonough ¹	\$ 30,746.69
Madson & Metcalf/Madson & Austin ²	\$ 27,565.22
	\$ 45,632.72
Anderson & Karrenberg ³	\$ 25,834.98
Snow Christensen & Martineau ⁴	\$ 24,000.00
Fenwick & West ⁵	\$555,779.19
F. B. Rice & Co. ⁶	\$ 10,058.74
CPA Global ⁷	\$ 3,738.44
Kirby Eades Gale Baker ⁸	\$ 16,289.69
Urquhart Dykes & Lord ⁹	\$ 18,735.56
D.P. Ahuja & Co. ¹⁰	\$ 4,996.00

¹ Former Patent Counsel for IAS

² Craig Madson-Expert Witness-IAS v. Optimal Robotics; IAS v. Microsoft et al & IAS v. IBM et al

³ SEC Counsel

⁴ Criminal Defense Counsel

⁵ Co-counsel-IBM & Microsoft Patent Infringement Lawsuits

⁶ Australian Patent Counsel

⁷ Australian Patent Renewal Agent

⁸ Canadian Patent Counsel

⁹ European Patent Office Counsel

¹⁰ India Patent Counsel

It appears that the Receiver would prefer that IAS have issued shares to each of the other law firms, with each of them having to handle the respective share transactions. The result would likely have been that a greater number of shares could have been sold over the same time period. It also certainly would have been substantially more convenient, substantially less disruptive, and substantially less burdensome for NSDP. NSDP had nothing to gain from retaining Client Trust funds of IAS, verifying instructions of the client for each of the payments made to other counsel, issuing payments, and accounting for the payments.

A total of \$52,960.00 was paid to the U.S. Patent & Trademark Office for patent related fees, including application, prosecution, issue, and maintenance fees.

It should be noted that it is very common for technology companies, including particularly publicly traded companies, to generate revenue for operations by selling shares. It should also be noted that it is very common for publicly traded companies to issue restricted shares in lieu of cash payments for a wide variety of business purposes, such as employee bonuses. There is nothing illegal or unethical for a law firm to accept shares of stock as payment for services or to accept shares in trust as a retainer for legal services.

During this same period, in January 2004, IAS also received the confidential Optimal Robotics settlement payment, which NSDP was requested by IAS to deposit in Client Trust, pay outstanding expert witness fees and other costs, pay outstanding fees of NSDP, pay a designated sum to Anderson & Karrenberg for SEC representation, and retain the balance, pending further

instructions from IAS. NSDP never had any discretion or authority to make any decision regarding disbursement of the Optimal Robotics settlement proceeds deposited in Client Trust. Detail information regarding the distribution of the Optimal Robotics settlement proceeds is presented below.

CLIENT TRUST DEPOSITS BY XSUN AND SOLCO I

The Receiver states that:

1. XSun paid \$1,000,000.00 to the Nelson Snuffer law firm on June 25, 2018; and
2. Solco I paid \$168,000.00 paid to the Nelson Snuffer law firm on June 25, 2018.

This is a mischaracterization of these transactions. XSun and Solco I each paid a non-refundable retainer deposit to NSDP on June 25, 2018, in the respective amounts stated above. These retainer amounts were paid to retain NSDP to represent the direct interests of XSun and Solco I as well as the indirect interests of XSun and Solco I by representing the Receivership Defendants. XSun and Solco were not named in the original case, however numerous exhibits involving XSun or Solco were introduced by the government as trial exhibits. (See, e.g., PLEX362, PLEX368, PLEX367, PLEX355). NSDP filed motions in limine to keep evidence that would involve both Solco and XSun out of the case. (See [Doc. 319](#), [Doc. 338](#), [Doc. 362](#), [Doc. 364](#), and [Doc. 365](#)). Those motions were denied. See [Doc. 376](#) (Docket Text Order dated 4/4/18). The government used exhibits during trial involving both XSun (PLEX356, PLEX358, PLEX364) and Solco (PLEX362, PLEX367, PLEX368). Over NSDP objections, the government was permitted to use “damages” exhibits against Solco (trial Exhibit PLEX739) and XSun (trial Exhibit PLEX741) despite our effort to have them excluded from trial.

Because neither were named as parties, and did not participate in discovery, there was no opportunity during trial for Solco or XSun to defend their interests. Notwithstanding, Solco and XSun were mentioned at least 182 times during the course of the trial. At closing arguments, the government argued for disgorgement against non-parties Solco1 and XSun. (Tr. 2446:20 - 2447:13; 2506:6-9; 2508:16-23.) When trial ended, the court's final ruling unequivocally threatened their interests. (See [Doc. 467](#), Findings of Fact ¶¶83, 84, 389, 390, Conclusions of Law footnote 621 on page 126, page 128-129, Injunction ¶15,) Therefore, it was the conclusion of both XSun and Solco that their interests needed to be protected by specific post-trial actions, like the RaPower bankruptcy, and funding appeals of the court's decisions to protect their interests. Their concerns were confirmed by the trial court's recent decision to extend all post-trial orders against the named defendants to the so-called "Affiliated Entities" including both Solco and XSun. Accordingly, both Solco and XSun were being protected by post trial actions by Defendants, and the appeal, and their interests are defended and included in the Opening Brief and also in the Reply Brief on appeal.

The government appeal brief before the 10th Circuit Court states, on page 4: "He [Neldon Johnson] also created, owns, and controls various non-party entities that have been involved in the scheme, including Solco I, LLC and XSun Energy LLC." On page 7: "Until Johnson formed RaPower-3 in 2010, lenses were sold through IAS. Solco I and XSun Energy have also sold lenses." On page 15: "On the government's motion, the court also froze assets of defendants and certain nonparties controlled by Neldon Johnson, including Solco I and XSun Energy, and appointed a receiver to collect and distribute the disgorgement award." On page 19: "Finally, defendants fail to show that the district court abused its discretion by freezing

assets held by nonparties Solco I and XSun Energy.” There are numerous other places that the property and interests of Solco and XSun are directly threatened, and can only be protected through a reversal of the trial court on appeal.

Unless the appeal was prosecuted, the interests of XSun and Solco could not be protected. There is no opportunity to file separate briefs for each of the appellants. We are permitted one brief for all appellants. The page and word limit cannot be expanded by filing separate briefs for each appellant, but all issues involving all parties (and these affected companies who were included throughout the government’s case and damages proof) were only allowed a single brief on behalf of all appellants.

To ensure that their interests were protected, and knowing that the named Defendants could not fund any appeal, XSun and Solco stepped up to fund post trial actions and the appeal on behalf of themselves, and necessarily the other appellants as well.

Copies of the complete NSDP Client Trust Ledgers for XSun and Solco I have been provided to the Receiver. Copies of NSDP invoices for services performed and costs incurred for which payment was made from the XSun and Solco I Client Trust funds prior to the Client Trust funds being frozen by order of the Court, as well as copies of NSDP invoices for services performed and costs incurred subsequent to the freeze order, which have not been paid, have been provided to the Receiver.

NSDP has turned other work down to be able to deal with protecting the interests of Solco, XSun and the named Defendants. It was the payment of the retainer that guaranteed these legal services would be compensated that allowed NSDP to commit to this ongoing legal work.

PHILLIPS TRUST DEED

The Receiver states in Footnote 23:

The Receiver had requested that Nelson Snuffer provide information about debts owed to IAS and RaPower. Information about amounts owed by the Phillips was not provided in response to that request. Nelson Snuffer finally provided relevant documents in response to a specific request by the Receiver. Nelson Snuffer explained that its failure to identify this information earlier was an oversight.

This was an inadvertent oversight that was promptly provided when the oversight was discovered. As explained to the Receiver, in the NSDP letter to the Receiver dated April 24, 2109, attorney Nelson was not directly involved with the disclosure of Receivership Defendant assets as that was being handled by the litigation team. NSDP understood that all the real property interest information of the Receivership Defendants had been provided and, furthermore, that it was the subject of independent research and confirmation by the Receiver. Until the Phillips Trust Deed was included in a specific RFI's directed to NSDP, it did not come to the attention of attorney Nelson, and in the midst of the extensive effort required to respond to the five (5) prior RFI's of the Receiver, it had been overlooked by NSDP. Apparently, it was not known to or disclosed by the litigation team or disclosed by the client and NSDP did not disclose it in response to the prior RFI's direct to NSDP because it was not included in the RFI's. Accordingly, the failure to disclose this IAS asset was entirely inadvertent. NSDP had made extensive effort to provide the information requested by the Receiver in the five (5) prior RFI's. NSDP would not intentionally fail to disclose any information subject to the Orders of the Court, without filing a motion with the Court. NSDP has absolutely no interest, desire or incentive to withhold information from the Receiver regarding any asset of IAS or any of the other Receivership Defendants.

CLIENT TRUST IAS SHARES DELIVERED TO RECEIVER

The Receiver states in Footnote 24:

Nelson Snuffer surrendered certificates representing 3.5 million shares to the Receiver in March 2019.

NSDP voluntarily disclosed the existence of these Client Trust shares when it was discovered that the litigation team had a miscommunication and had failed to disclose the shares in November of 2018. These Client Trust shares had been on deposit with Alpine Securities since 2011. As stated above, no shares had been sold since 2012. When they were voluntarily disclosed by NSDP, the Receiver requested the transfer of the shares to the Receiver and NSDP promptly requested the return of the shares from Alpine Securities. Upon receipt of the shares from Alpine Securities, they were immediately then transmitted to the Receiver.

**RECEIVER CLAIM THAT CERTAIN NSDP SERVICES
WERE NOT FOR IAS OR RAPOWER-3**

The Receiver states in Footnote 26:

As noted above, some of the legal work for which Nelson Snuffer was paid redounded to the benefit of Neldon Johnson, other family members, and lens purchasers—not to RaPower or IAS.

It should be noted that the text of the Report containing the reference to Footnote 26 states nothing about legal work for which NDSP was paid being for the benefits of Neldon Johnson, other family members, or lens purchasers, not to RaPower or IAS. Accordingly, there is nothing for NSDP to respond to in relation to this footnote, at this time. In general, however, NSDP provided detailed information relating to this issue in its letter to the Receiver of February 21, 2019, which was a response to the Receiver's Request for Information to NSDP of January 30, 2019, and the documentation attached to that letter.

It should further be noted that the Court has ordered that the affiliated companies, who either had a licensor or a licensee relationship with IAS, are included in the Receivership. That obviates any question about the whether IAS or RaPower-3 received a benefit from the services paid for by IAS or RaPower-3 respectively.

It should also be noted that the Receiver has submitted eleven (11) Requests for Information (RFI) to NSDP, the first being submitted on December 17, 2018 and the last on June 25, 2019. NSDP has fully responded to each of the RFI's. In addition to the information presented in the respective responses, NSDP has provided 120 Exhibits (Exhibits A-AAA and Exhibits 1-67) in response to the Receiver's RFI's.

NELSON SNUFFER ROLE IN PAYING COMPANY EXPENSES

The Receiver erroneously states:

IAS used newly issued stock not only to provide a source of funding for work performed by Nelson Snuffer, but also to pay other expenses. Out of \$1.2 million in stock sales proceeds between January 2009 and September 2013, \$1.0 million was paid to Nelson Snuffer. Nelson Snuffer paid more than \$200,000 from these proceeds to other law firms, the U.S. Patent Office, and intellectual property consultants. In addition, IAS received a significant amount of funds pursuant to a confidential litigation settlement. The payment of the settlement amount was not paid to IAS. Instead, the amount was retained in Nelson Snuffer's trust account and subsequently used to pay expenses as directed by IAS or distributed to IAS in segments.

The stock sale records for the IAS Client Trust shares for Emmett Larkin, Sterne Agee, Wilson Davis and Alpine Securities verify that the payments issued to NSDP in 2009-2013 total \$868,807.69, not \$1.2 million. NSDP had no role in paying company expenses of IAS. The Receiver is correct that a portion of the proceeds from the sale of shares received and deposited

in Client Trust during the time period of January 2009 and December 2012, were used to pay other law firms, including Snow Christensen & Martineau, Anderson & Karrenberg, Fenwick & West, and Jones Waldo Holbrook & McDonough, and including foreign patent counsel for Australia (FB Rice & CPA Global), Canada (Kirby Eades Gale Baker), India (D.P. Ahuja & Co.), and the European Patent Office (Urquhart-Dykes & Lord LLP), and to pay costs, such as fees to the U.S. Patent and Trademark Office, fees to foreign patent offices, and patent draftsmen. IAS owned or was the licensee of U.S., Australian, Canadian, Indian, and European Patent Office patents. A complete copy of the NSDP Client Trust account for IAS from 2002 to 2018 has been provided to the Receiver.

As noted above, the Receiver has erroneously stated:

. . . In addition, IAS received a significant amount of funds pursuant to a confidential litigation settlement. The payment of the settlement amount was not paid to IAS. Instead, the amount was retained in Nelson Snuffer's trust account and subsequently used to pay expenses as directed by IAS or distributed to IAS in segments.

As indicated above, at the time the settlement was reached in January, 2004, of the Optimal Robotics patent infringement litigation (U.S. District Court for the District of Utah, Central Division, Case No. 2:99-CV-00517-PGC), IAS had incurred substantial, unpaid attorney fees, costs and expert witness fees, for the prosecution of this case by NSDP. As directed by IAS, the following amounts were paid immediately from the settlement proceeds:

1/29/2004	NSDP (previously invoiced fees and costs)	150,919.86
1/29/2004	Brett Reich (NSDP)	686.41
1/29/2004	Madson & Metcalf (patent expert witness fees)	27,565.22
1/29/2004	LECG, LLC (patent damages expert witness fees)	22,757.18
1/29/2004	Sperion Corporation	2,606.70
1/29/2004	Citicourt	1,380.35
1/29/2004	LeRoy Bearnson (patent engineering expert witness fees)	<u>1,500.00</u>

Subtotal Optimal Litigation Unpaid Fees & Costs \$207,415.72

In addition to the foregoing, IAS directed the payment of \$100,000.00 to Anderson & Karrenberg for fees and costs associated with the case of *Securities and Exchange Commission v. International Automated Systems, Inc. et al*, U.S. District Court of Utah, Central Division, Case No. 2:98-CV-0687-B. IAS further directed the further payment of \$15,690.00 to NSDP for fees and costs unbilled at the time of Optimal Settlement.

1/30/2004	Anderson & Karrenberg	\$100,000.00
3/15/2004	NSDP (fees and costs unbilled at time of settlement)	<u>15,690.00</u>
	Subtotal Other Fees and Costs	\$115,690.00

IAS requested that NSDP retain the balance of the settlement proceeds in Client Trust, pending further instructions from IAS. Having no reason, other than inconvenience, not to comply with IAS's request, the funds were retained in Client Trust and were disbursed per IAS's subsequent instructions. One million Twenty Thousand (\$1,020,000.00) was disbursed thereafter directly to IAS as instructed. Other disbursements were made as directed by IAS for the balance of the Optimal Robotics settlement. A copy of the NSDP Client Trust Ledger verifying all of the foregoing has been provided to the Receiver previously.

Any implication from the Receiver that NSDP received some benefit from the retention of the remaining settlement proceeds in Client Trust, or that NSDP had any discretion over the distribution of the settlement proceeds is totally unfounded. NSDP exercised no discretion over those funds as they were the property of IAS. The funds were held and disbursed solely as directed by IAS, in accordance with ethical and legal requirements at all times.

WARRANTS EXERCISED AND HELD

The Receiver has asserted in his Table entitled WARRANTS EXERCISED AND HELD BY CERTAIN INSIDERS that attorney Nelson of NSDP has obtained 1,000,000 shares from Warrants and still holds 1,000,000 Warrants. These are apparently claimed by the Receiver to have been issued in 2006. As NSDP has advised the Receiver previously by its June 22, 2019 response to the Receiver's eighth (8th) RFI to NSDP dated June 2, 2019, that neither NSDP nor attorney Nelson has never exercised any warrants for IAS shares and has no documentation or other knowledge or documentation of any warrants currently held by attorney Nelson of NSDP or NSDP, except as noted below. NSDP has previously advised the Receiver that if the Receiver has any question about there being any outstanding shares or warrants held by NSDP or attorney Nelson of NSDP, NSDP or attorney Nelson will be pleased to assign or quit claim any such shares or warrants to the Receiver.

NSDP advised the Receiver by its June 7, 2019 response to the Receiver's seventh (7th) RFI to NSDP dated May 7, 2019, that IAS did issue a Warrant for 500,000 IAS Shares to Denver Snuffer on July 21, 2017, and a Warrant for 500,000 IAS Shares to David Nelson on July 25, 2017. No attempt was made at any time by attorney Snuffer or attorney Nelson to exercise the Warrants or any portion thereof. Those Warrant have been surrendered and assigned by attorney Snuffer and attorney Nelson to the Receiver.

Dated this 15th day of August, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.
Denver C. Snuffer, Jr.
Steven R. Paul
Daniel B. Garriott
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record.

In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

Neldon Johnson neldon@iaus.com

Greg Shepard greg@rapower3.com

/s/ Steven R. Paul
Attorneys for Defendants