

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRYCER, LLC, BRYCER MANAGEMENT, INC.,

Petitioners

v.

TEGRIS, INC.,

Patent Owner.

Case No. IPR2023-01196
Patent No. 11,126,966

DECLARATION OF MICHAEL A. MILLER

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I, Michael A. Miller, declare as follows:

I. INTRODUCTION

1) I have been asked to provide my testimony on behalf of patent owner Tegriss, Inc. ("Tegriss") in connection with *inter partes* review ("IPR") proceedings in IPR2023-01196 Brycer LLC and Brycer Management, Inc. ("Petitioners"), involving U.S. Patent No. 11,126,966 (the "'966 Patent"), titled "Systems and Methods for a Web Based Inspection Compliance Registry and Communication Tool" by named inventors Andrew S. Moren and Robert J. Moren. I understand Tegriss owns '966 Patent by way of assignment. EX1001.

2) I understand Petitioners challenge Claims 8-16 of the '966 Patent as allegedly being unpatentable under 35 U.S.C. § 103 in view of certain alleged prior art references. Paper 9 ("Institution Decision") at 9. Petitioners challenge Claims 8-16 on the following ground:

- a. Claims 8-16, 35 U.S.C. § 103, based on Key, Ex. 1005
(U.S. Patent Application Publication No.
2002/0029222A1, published Mar. 7, 20020), Chauhan,
Ex. 1016 (W.O. International Publication No.
2004/104891A1, published Dec. 2, 2004), Sweeney Ex.
1006 (U.S. Patent Application Publication No.

2005/0021449A1, published Jan. 27, 2005), and
McKinney Ex. 1020 (U.S. Patent Application Publication
No. 2004/0230455A1, published Nov. 18, 2004).

3) I also understand the Board instituted review of all the
Challenged Claims. *Id.* at 2.

4) I am familiar with the technology at issue in the '966 Patent. I
have been asked to provide my technical review, analysis, insights, and
opinions regarding the '966 Patent and opinions related to how Tegriss'
products practice certain claims of the '966 Patents and the commercial
success of the patented products, including Brycer's service offering it calls
The Compliance Engine ("TCE").

5) In reaching my opinions, I considered the materials identified
in this Declaration based on my education, training, research, personal
knowledge, and professional experience.

6) I make this Declaration based on my own personal knowledge
and, if called upon to testify, would testify competently to the matters
contained herein.

II. BACKGROUND AND QUALIFICATIONS

7) I received a Bachelor of Arts degree in Business Administration
from NW Nazarene College, now Northwest Nazarene University in 1979.

8) I have spent my entire 48-year career in the fire prevention industry.

9) I am the current president and owner of Moon Security Services, Inc. located in Pasco, Washington. Moon Security is a family-owned business since 1957. It is a full-service security company providing services such as patrol, installation, maintenance, monitoring and EHM-Court services, currently having over 80 employees. Moon Security is an SDM Top 100 recognized company.

10) I serve on the board for Lourdes Health Network, 3RFC, TRIDEC, levy /bond campaign chairperson for Pasco School District.

11) I have served as president of Washington Burglar and Fire Alarm Association, now known as SILSA. I am the Past President of NBFAA/ESA (Electronic Security Association) 2008-2010.

12) I have been involved in the alarm and security industry for over 30 years.

13) I have extensive knowledge of the requirements for compliance with state and local government laws and regulations relating to fire and health safety. Exhibit 1 attached here is my curriculum vitae.

III. MATERIALS CONSIDERED

14) I considered information from various sources in forming my

opinions. I also reviewed the documents and references cited herein.

IV. LEGAL UNDERSTANDING

15) I relied on instructions from Tegriss' legal counsel as to the applicable legal standards to use in arriving at my opinions in this Declaration. My opinions are informed by my understanding of the relevant law.

16) I understand a person of ordinary skill in the art ("POSA") is assumed to have knowledge of all prior art references. I understand multiple prior art references or teachings can be combined to show a patent claim would have been obvious. I understand the proponent of an obviousness challenge must show a person of ordinary skill in the art would have had reason or motivation to combine the references in the way the elements are recited in the claim. This reason or motivation can come from different sources—like the prior art—but it cannot come from the challenged patent's own disclosure. The challenger of a patent claim cannot use hindsight to assert the inventor's own work against the inventor to argue the invention would have been obvious. I further understand a combination is improper when one of ordinary skill in the art, upon reading a reference, would be discouraged from following the path set out in the reference. I understand this standard may be met when a reference

criticizes, discredits, or otherwise discourages modifying the reference to arrive at the claimed invention.

17) I understand objective evidence of non-obviousness (“secondary considerations” of non-obviousness) must be considered when evaluating whether a claimed invention would have been obvious to one of ordinary skill at the time of invention. I understand these secondary considerations may include, for example: (i) a long-felt but unmet need in the prior art was satisfied by the claimed invention; (ii) commercial success of products covered by the patent; (iii) unexpected results achieved by the invention; (iv) praise of the invention by others skilled in the art; (v) the taking of licenses under the patent by others; (vi) whether others had tried and failed to make the invention; (vii) whether persons of ordinary skill in the art expressed surprise or disbelief regarding the invention; (viii) whether the inventor proceeded contrary to accepted wisdom; and (ix) deliberate copying of the invention. I understand there must be a nexus between any such secondary consideration of non-obviousness and the claimed invention. I also understand that “[a] patentee is entitled to a rebuttable presumption of nexus between the asserted evidence of secondary considerations and a patent claim if the patentee shows that the asserted evidence is tied to a specific product and that the product is the invention

disclosed and claimed.”

18) I understand objective indicia of non-obviousness can be the most probative evidence of non-obviousness in the record and enables the court to avert the trap of hindsight. Objective indicia of nonobviousness may often establish that an invention appearing to have been obvious in light of the prior art was not. To be afforded substantial weight, the objective indicia of nonobviousness must be tied to the novel elements of the claim at issue. Objective indicia need only be reasonably commensurate with the scope of the claims.

19) I also understand secondary considerations include commercial success enjoyed by embodiments of the patented invention, industry praise for the patented invention, copying by others, and the existence of a long-felt but unmet need for the invention. Evidence of objective indicia of nonobviousness must have a nexus to the claims, *i.e.*, there must be a legally and factually sufficient connection between the evidence and the patented invention. I understand that Tegris bears the burden of showing that a nexus exists. To determine whether the patentee has met that burden, one must consider the correspondence between the objective evidence and the claim scope.

20) To be relevant, I understand a secondary consideration must

have a legally and factually sufficient connection (nexus) to the claimed invention. A nexus is presumed when a commercial product (if relevantly successful, for example) is the invention disclosed and claimed in the patent.

IV. LEVEL OF ORDINARY SKILL IN THE ART

21) Tegriss' counsel has informed me the claims of a patent are judged from the perspective of a hypothetical construct involving a POSA at the time the claimed invention of the patent was made. I understand the relevant priority date is January 23, 2007. I understand the "art" is the field of technology to which the '966 Patent is related.

22) I understand Tegriss contends a POSA in the relevant time period for the '966 Patent would have had knowledge of and experience in the inspection and maintenance of fire hydrants or at least similar emergency or life safety assets and software available for use in connection therewith in 2007. Paper No. 8, at 13. In its Institution Decision, I understand the Patent Trial and Appeal Board (the "Board") applied Brycer's description of the qualifications of POSA. Paper 9 at 21-2.

23) Based on my education and experience in the field set forth above, I meet each of the definitions of one of ordinary skill in the art discussed above, including the levels of skill articulated by Brycer and

Tegris. I am qualified to provide opinions about how one of ordinary skill in the art would have interpreted and understood the '966 Patent and the alleged prior art cited in the Petition. I meet this definition because our company works with Tegis, receiving and providing data in regards to when fire alarms require testing and inspections, servicing deficiencies, etc.

24) I was asked to consider the '966 Patent, the state of art from 2007 through today, and prior art through the eyes of a POSA. I applied the perspective of a POSA in rendering my opinions.

V. THE '966 PATENT AND THE CHALLENGED CLAIMS

25) I understand Brycer challenges the validity of the '966 Patent. The Challenged Claims 8-16 of '966 Patent are directed to fire hydrant management systems.

26) Challenged Claims 8-16 of the '966 Patent require a "computer-implemented method for using a fire hydrant management software and a web-based registry to track requisite inspection of an owned asset comprising:"

- a. granting remote access to a web-based registry system, wherein the web-based registry is configured to run a fire hydrant management software, to at least three classes of user, wherein the three classes of user comprise: (1) an owner of an asset (2) an approval authority (3)

- an inspector;
- b. retrieving, by a computer-based fire hydrant management software system, real time records of assets from a database, the database being accessible and augmentable by a classes of user;
- c. analyzing the records of assets from the database to identify notification events;
- d. based on the analysis, notifying an owner of an asset of a notification event, wherein the notice includes a standard format description of the type of inspection, and a cost associated with the type of inspection, and wherein the notification event comprises a designatable interval in advance of an impending deadline for the inspection, and wherein the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets;
- e. based upon the analysis, sending a standard format notice to the approval authority of the status of the assets assigned to the approval authority, and wherein the approval authority, upon accessing the web-based registry, may update and review the status of the assets assigned;
- f. upon logging on to a password controlled website configured to

- provide access to the fire hydrant management software, providing to an inspector the owner selects, the selection based upon a list of qualified inspectors that are available to inspect the asset based upon attributes including proximity to the asset, a web-based template configured to describe the asset at each of the steps of the inspection;
- g. receiving from the inspector, inspection information in specific response to the web-based template;
 - h. storing in a database in association with the asset, the inspection information, wherein the inspection information is accessible to the users, and updating the database in association with the asset based upon the inspection information;
 - i. transmitting to the approval authority, a standard format compliance report including noting compliance, wherein the compliance report includes, noting deficiencies in the asset and storing the noted deficiencies in association with the asset.

VI. SECONDARY CONSIDERATIONS AS INDICIA OF NONOBVIOUSNESS

A. Nexus to Tegriss and Brycer Commercial Offerings

27) I, and Moon Security employees working under my direct supervision, have knowledge and experience with Tegriss' fire hydrant management system and Brycer's competing offering known as The

Compliance Engine ("TCE"). I acquired my knowledge through daily interaction with Tegriss for multiple cities that require their reporting program.

28) I reviewed Exhibit 2018, a chart showing TegrissFire to the '966 Patent claims. Tegriss' system is the invention disclosed and claimed in the '966 Patent. It is a computer-implemented method for using a fire hydrant management software and a web-based registry to track inspections of assets related to fire safety. The Tegriss system provides asset owners, approval authorities, and inspectors all remote access to a web-based registry system. Tegriss configured its web-based registry to run the fire hydrant management software to at least three classes of users, namely, the asset owner, the AHJ, and the inspector.

29) The Tegriss computer-based fire hydrant management software system retrieves real time records of assets from a database. Each of the class of users may access and update the database.

30) The Tegriss computer-based fire hydrant management software system analyzes the records of assets from the database and identifies events requiring notification to the classes of users.

31) The Tegriss computer-based fire hydrant management software system, based on that analysis, then notifies an owner of an asset of an

event. That notice includes a description of the type of inspection required and associated with the type of inspection. The notification event happens as a predetermined interval in advance of the pending inspection deadline. The asset owner may remotely access the fire hydrant management software compliance registry, review, and update the status of the asset.

32) The Tegriss computer-based fire hydrant management software system, based on the foregoing analysis, sends a notice to the AHJ regarding the status of the assets assigned to the approval authority. The AHJ may access the web-based registry, review, and update the status of the assets assigned.

33) The Tegriss computer-based fire hydrant management software system allows users to log on to a password controlled website and access the fire hydrant management software, allow the owner to select an inspector based upon a list of qualified inspectors available to inspect the asset based on attributes such as the proximity to the asset, and to provide the selected inspector a web-based template to describe the asset and each of the steps of the inspection.

34) The Tegriss computer-based fire hydrant management software system then receives from the inspector specific inspection information about the inspected asset.

35) The Tegriss computer-based fire hydrant management software system stores in a database in association with the asset, the inspection information. The classes of users may then access in real time the inspection information. The system then updates the database in association with the asset based upon the inspection information.

36) The Tegriss computer-based fire hydrant management software system then transmits to the AHJ a compliance report including noting compliance, noting deficiencies in the asset, and storing the noted deficiencies in association with the asset.

37) I reviewed Exhibit 2019 mapping Brycer's TCE to the claims of the '966 Patent. Brycer's system is the invention disclosed and claimed in the patent. My personnel have used Brycer's TCE system, and it provides the same functionality as I described above with respect to Tegriss's system.

38) The Claim Chart in Exhibit 2019 accurately reflects my knowledge of Brycer's TCE system. My personnel working under my direct supervision have personally used Brycer's TCE system at www.thecomplianceengine.com.

39) Brycer's TCE is a computer-implemented method for using an asset management software and web-based registry to track inspection of an owned asset, *e.g.*, fire hydrant, sprinkler system, *etc.*

40) Brycer's TCE grants remote access to a web-based registry system, which is configured to run a fire hydrant (owned asset) management software, to at least three classes of users, namely, the owner of an asset, an approval authority, and an inspector.

41) TCE retrieves, through computer-based asset management software, real time records of assets from a database, the database being accessible and augmentable by users.

42) TCE analyzes the records of assets from the database to identify notification events.

43) TCE notifies asset owners of a notification event, wherein the notice includes a standard format description of the type of inspection, and a cost associated with the type of inspection, and wherein the notification event comprises a designatable interval in advance of an impending deadline for the inspection, and wherein the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.

44) Based upon the analysis, The Compliance Engine sends a standard format notice to the approval authority of the status of the assets assigned to the approval authority, and wherein the approval authority, upon accessing the web-based registry, may update and review the status of

the assets assigned.

45) TCE, upon logging on to a password controlled website configured to provide access to the fire hydrant management software, providing to an inspector the owner selects, the selection based upon a list of qualified inspectors that are available to inspect the asset based upon attributes including proximity to the asset, a web-based template configured to describe the asset an each of the steps of the inspection.

46) The Compliance Engine provides for the inspector to submit inspection information in response to the web-based template.

47) The Compliance Engine stores in a database in association with the asset, the inspection information, wherein the inspection information is accessible to the users, and updates the database in association with the asset based upon the inspection information.

48) The Compliance Engine transmits to the approval authority a standard format compliance report including noting compliance, wherein the compliance report includes noting deficiencies in the asset and storing the noted deficiencies in association with the asset.

B. COMMERCIAL SUCCESS

49) The Tegriss fire hydrant management system is commercially successful despite the initial reluctance of stakeholders, e.g., owners,

authorities having jurisdiction (“AHJ”), and inspectors to adopt such a system.

50) The Tegriss fire hydrant management system provided surprising and unexpected results including significantly improved compliance shown by both Tegriss’s evidence and evidence published by Brycer relating to TCE.

51) The Tegriss system has allowed us to grow our business, meet jurisdictional requirements regarding fire safety inspection compliance, allows for transparency between the authority having jurisdiction (“AHJ”) and Moon to enforce requirements and correct deficiencies, and most importantly, it has increased life safety in the community where they serve.

C. INDUSTRY PRAISE

52) I am aware of people in the fire safety industry praising Tegriss’ patented system.

D. COPYING

53) Before Tegriss filed its patent application in 2008, the fire safety industry operated archaically. The system of reporting was not standardized. Companies all sent in their reports in different ways. The TEGRIS system allowed fire marshals to have one uniform standard form to look at, and they did not have to review different forms. It helped

tremendously in increasing awareness of missed inspections and deficiencies found in those inspections.

54) As early as 2011 (Richland), I learned of Tegriss' invention. Since that time, Tegriss' system has become the gold standard in the industry.

55) Since Tegriss' launched, competing systems including Brycer's TCE have launched establishing copying and further supporting evidence of the invention's commercial success.

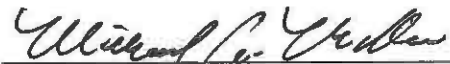
56) Prior to Tegriss' patent, it was difficult/impossible to access real-time information in an efficient and timely manner.

57) With the introduction of Tegriss in Richland, WA in 2011, we found over 300 systems in the City of Richland with deficiencies that the City was not previously aware of.

In signing this Declaration, I recognize this Declaration will be filed as evidence in an *inter partes* review before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize I may be subject to cross-examination in the case and cross-examination will take place within the United States. If cross-examination is required, I will appear for cross-examination within the United States during the time allotted.

I hereby declare all statements made herein of my own knowledge are true and all opinions expressed herein are my own; and further these statements were made with the knowledge willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code.

Dated: 4-15-2024



Michael A. Miller