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OCEAN TOMO, LLC, Claimant and Counter-respondent, And PATENTRATINGS, LLC, Respondent and Counterclaimant.	Arbitration No. 73 117 Y 00047 11 **PATENTRATINGS' ARBITRATION BRIEF**

#107697 v6

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PAGE

TABLE OF CONTENTS

I. INTRODUCTION. 1
II. RELEVANT FACTS 3
III. CLAIMS ASSERTED IN ARBITRATION 13
A. OT's Claims 13
B. PR Claims 15
IV. ARGUMENT 15
A. OT's Primary Demand For Arbitration Lacks Merit. 15
1. Principles of Contract Interpretation Defeat OT's Claim. 16
2. OT Has Waived Any Right And/Or Is Estopped to Recover the Disputed Costs.. 19
3. The Supplemental License Agreement Limits PR's Liability.. 21
4. Novation 22
B. OT Damages Assertion Supports A Finding That The Disputed Costs Were To Be Borne By OT 22
C. OT's Claim Respecting The Supplemental License Agreement Fails 23
D. OT's Second Supplemental Demand Should Be Moot 25
E. OT's Claim Regarding The patentratings.com URL Is Baseless 26
F. OT's Effort To Foist Costs Onto PR In Violation Of The Amendment Justifies PR' Termination Of The License Agreement 27
V. CONCLUSION.... 29

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PAGE

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192 Cal. App. 4th 265 (2011)..28. 29

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54 Cal. 2s 773 (1960) 20

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161 Cal. App. 4th 906 (2008)..17, 18

Kennecott Corp. v. Union Oil Co.,
196 Cal. App. 3d 1179 (1987).. 16

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216 Cal. App. 2d 849 (1963)... 22

Oceanside 84 Ltd. v. Fidelity Federal Bank,
56 Cal. App. 4th 1441 (1997)... 16

Panno v. Russo,
Cal. App. 2d 408 (1947).. 20

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6 Cal. 4th 307 (1993) 21

Sackett v. Spindler,
248 Cal. App. 2d 220 (1967)... 27

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6 Cal. App. 3d 957 (1970)... 16

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PAGE

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195 Cal. App. 3d 1032 (1987)....27, 28
Universal Sales Corporation, Ltd., v. California Press Mnfg. Co.,
20 Cal. 2d 751 (1942).... 17
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70 Cal. App. 3d 714 (1977).... 16

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1 I.

2 **INTRODUCTION**

3 Respondent and counterclaimant PatentRatings, LLC ("PatentRatings" or "PR")
4 developed and owns innovative patents and other intellectual property (the "Intellectual
5 Property") which it has licensed to claimant and counterclaimant Ocean Tomo, LLC
6 ("Ocean Tomo" or "OT") under various license agreements. The legal and contractual
7 relationship between PR and OT is properly stated as "Licensor" and "Licensee" – that is
8 PR owns certain rights and OT pays royalties to use those rights. As OT's founder and
9 Managing Director James Malackowski succinctly explained in 2009 "[PR] is a separate
10 company that is an IP holding firm[….]. They own the rights and we pay them." PR has
11 no employees and no business operations whatsoever other than licensing its Intellectual
12 Property and collecting royalties.

13 Through this arbitration action, OT seeks to turn this relationship on its head by
14 contriving to interpret the parties' various agreements to put PR in a new role as
15 software/data provider and to put OT in a new role as software/data consumer. Pushing
16 this contrived relationship through a tortured breach of warranty theory, OT asks this Panel
17 to require PR to pay millions of dollars in costs (the "Disputed Costs") incurred by OT for
18 development and maintenance of essentially all software, data, systems and other overhead
19 supporting the current operations of OT's business unit known as Ocean Tomo Patent
20 Ratings ("OTPR"). The Disputed Costs were incurred over a period of years from 2007 to
21 the present at the exclusive direction, and for the primary benefit of, OT. (OT collects all
22 revenues and pays PR a royalty.)

23 At no time prior to this dispute did OT ever dispute these costs; it never demanded
24 repayment or even notified PR that the costs were being incurred purportedly on PR's
25 behalf. If successful, OT's claim would vastly alter the economics of the parties'
26 relationship as laid out in their many agreements.

27 The precise legal focus of this dispute distills in large part to interpretation of two
28 contractual provisions – one in the July 2007 "Amendment" to the parties' initial 2004

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