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9 Attorneys for Plaintiff  
N4D, LLC

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

14 N4D, LLC,

15 Plaintiff,

16 vs.

17 LEGEND3D, INC. f/k/a LEGEND  
FILMS, INC., BARRY B. SANDREW,  
18 CHARLES GREGORY PASSMORE  
a/k/a GREG PASSMORE, and BIRD  
19 ROCK MULTIMEDIA, INC. d/b/a  
PASSMORE LABS and/or Z MEDIA,

20 Defendants.  
21

Case No. 3:13-CV-02656-BEN-NLS

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY RELIEF  
(PATENT)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, N4D, LLC (“N4D”), by and through its undersigned counsel,  
2 hereby alleges as follows:

3 **INTRODUCTION**

4 1. N4D operates a technology company specializing in the development  
5 of technology and software for the conversion of two dimensional (“2D”) films for  
6 three dimensional (“3D”) viewing, computer graphic rendering, volumetric  
7 rendering and related technology for the 3D viewing marketplace. N4D is also the  
8 successor in interest to 3DH Corporation a/k/a 3DH Company, LLC (“3DH”),  
9 which was a similarly situated company specializing in the same fields as N4D.

10 2. Defendant Charles Gregory Passmore a/k/a Greg Passmore is, and at  
11 all relevant times hereto was, the President of Defendant Bird Rock Multimedia,  
12 Inc. d/b/a Passmore Labs and/or Z Media (collectively “Passmore”).

13 3. From 2003 through 2009, Passmore entered into numerous  
14 employment agreements—and amendments thereto—with 3DH and N4D.  
15 Pursuant to those employment agreements, Passmore was hired for, among other  
16 things, the development of 2D to 3D film conversion, computer graphic rendering,  
17 volumetric rendering technology and software, and related technology for the 3D  
18 marketplace.

19 4. Each of the employment agreements that Passmore signed with 3DH  
20 and N4D included provisions that all of the work and intellectual property that  
21 originated or was derived from the performance of Passmore’s duties would  
22 become the exclusive property of 3DH and/or N4D.

23 5. On or about February 25, 2008, Passmore entered into a contract with  
24 Defendant Legend3D, Inc. f/k/a Legend Films, Inc. (“Legend”) and Legend’s  
25 founder, Defendant Barry B. Sandrew (“Sandrew”). The contract was titled “2D to  
26 3D Agreement” (the “Legend Agreement”), and provided that the parties wished  
27 “to enter into a business relationship to convert 2D content to 3D.” At the time of  
28

1 signing the Legend Agreement, the original employment agreement between  
2 Passmore and 3DH for development of 2D to 3D conversion technology—as well  
3 as three (3) subsequent amendments thereto—were in full effect.

4 6. Legend holds itself out as “an innovative stereoscopic and visual  
5 effects company,” and claims that it “provides the highest-quality stereoscopic VFX  
6 and conversion in the industry.”

7 7. On or about November of 2007, Passmore began filing a series of  
8 patent applications, the bases for which originated and/or were derived from the  
9 performance of Passmore’s duties pursuant to his employment agreements with  
10 3DH and/or N4D. The first of these applications was titled “SYSTEM AND/OR  
11 METHOD FOR AUTOMATED STEREOSCOPIIC ALIGNMENT OF IMAGES”  
12 and was properly disclosed and assigned to 3DH per the employment agreements.  
13 This application, App. No. 11/986, 490, was filed on November 21, 2007 and was  
14 published on or about May 21, 2009, as Pub. No. 2009/0128621.

15 8. On or about December 21, 2007, Passmore filed a provisional patent  
16 application, App. No. 61/016,355 (“355 Provisional”), on behalf of—and paid for  
17 by—3DH. The patent attorney whom Passmore personally requested be used to  
18 file the ‘355 Provisional, was Joseph Mayo (“Mayo”), USPTO Customer 36067,  
19 Dalina Law Group, P.C. 1/k/a ARC Patents (collectively “ARC”), 79120 Ivanhoe  
20 Ave., Suite 325, La Jolla, California 92037.

21 9. On information and belief, it was not until on or about July 22, 2008,  
22 following questions by 3DH, that Passmore disclosed the ‘355 Provisional to 3DH.

23 10. On or about December 22, 2008, Passmore—via Mayo and ARC—  
24 filed a patent application, App. No. 12/341,992 (“992 Application”), claiming  
25 priority to the ‘355 Provisional. Passmore filed the ‘992 Application on behalf of  
26 3DH. On information and belief, neither Passmore nor anyone at ARC disclosed to  
27 3DH that they had filed the ‘992 Application on behalf of 3DH before, during, or  
28 after at the time of filing.

1           11. On or about February 18, 2009, Passmore unequivocally denied having  
2 filed a non-provisional application claiming priority to the ‘355 Provisional to 3DH,  
3 thus concealing the existence of the ‘992 Application from 3DH.

4           12. On or about July 8, 2009, Passmore entered into an employment  
5 agreement with N4D following N4D’s succession of 3DH, under which Passmore  
6 agreed to provide additional services regarding the continued development of 2D to  
7 3D conversion technology, volumetric rendering, computer graphics rendering, and  
8 related technology (the “N4D Agreement”). The N4D Agreement was for a term of  
9 one year, from July 8, 2009 until July 8, 2010. The N4D Agreement continued and  
10 reaffirmed that all intellectual property that originated or was developed by  
11 Passmore during the course and scope of Passmore’s employment was the  
12 exclusive property of N4D.

13           13. On or about August 17, 2009, Sandrew—via Mayo and ARC, the same  
14 firm and lawyer used to file patents on behalf of 3DH/N4D—filed a patent  
15 application, App. No. 12/542,498, as a continuation-in-part (“CIP”) to a previous  
16 patent application. This CIP, which listed Sandrew as the sole inventor, added new  
17 material describing stereoscopic 3D technology and 2D to 3D conversion, which  
18 was not included in the parent patent application. This new material included  
19 screenshots of N4D’s “Synth3D” proprietary software. This CIP application issued  
20 as U.S. Patent No. 7,907,793 (“’793 Patent”) (**Exhibit A**).

21           14. Each issued claim of the ’793 Patent is supported by the material that  
22 was newly added in the CIP application. Stated differently, the parent patent  
23 application of the CIP application does not support the claims issued in the ’793  
24 Patent. For example, each independent claim of the ’793 Patent recites setting and  
25 applying a “depth parameter,” which is not disclosed in the parent patent  
26 application.

27           15. However, the claims issued in the ’793 Patent find support in the  
28 disclosure of the ’992 Application. The ’992 Application, filed by Passmore eight

1 months prior to the CIP application, discloses depth information used to “provid[e]  
2 three-dimensional views from a two-dimensional image,” as recited in the Abstract  
3 of the '992 Application. As a further example, the Abstract of the '992 Application  
4 recites that “[d]epth information is assigned by the system to areas of a first image  
5 via a depth map.”

6 16. Passmore—not Sandrew—was paid for the development of the  
7 Synth3D software by 3DH/N4D pursuant to the employment agreements signed  
8 between Passmore, 3DH and N4D. Synth3D is the exclusive property of N4D.

9 17. Sandrew—via Mayo and ARC—subsequently filed numerous  
10 continuation, divisional, and CIP applications which contain the Synth3D software  
11 interface captures in addition to containing the 2D to 3D technology Passmore  
12 developed under his employment agreements with 3DH/N4D. Sandrew is listed as  
13 a co-inventor on each of these subsequent continuation applications along with  
14 Tony Baldrige and/or Jared Sandrew.

15 18. Despite having been responsible for the development of N4D’s  
16 proprietary technology under his employment agreements, as well as providing  
17 N4D’s intellectual property to Sandrew and Legend as the basis for the continuation  
18 applications, Passmore is not listed as the inventor or co-inventor on any of the  
19 applications. Pursuant to his employment agreements, Passmore would be  
20 obligated to assign all rights to such patents to 3DH/N4D.

21 19. In addition to the '793 Patent, these continuation applications were  
22 subsequently granted as U.S. Patent Nos. 8,396,328 (“328 patent”) (**Exhibit B**);  
23 8,073,247 (“247 patent”) (**Exhibit C**); 8,078,006 (“006 patent”) (**Exhibit D**);  
24 8,160,390 (“390 patent”) (**Exhibit E**); 8,401,336 (“336 patent”) (**Exhibit F**); and  
25 8,385,684 (“684 patent”) (**Exhibit G**) (collectively the “Legend Patents”). Various  
26 claims in these patents find support in the '992 Application, although none of the  
27 patents lists Passmore as an inventor.

28 20. None of these patent applications were disclosed to 3DH/N4D before,

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