

EXHIBIT 16

1 DARIN W. SNYDER (SB #136003)
 dsnyder@omm.com
 2 LUANN L. SIMMONS (SB #203526)
 lsimmons@omm.com
 3 ALEXANDER B. PARKER (SB #264705)
 aparker@omm.com
 4 BILL TRAC (SB #281437)
 btrac@omm.com
 5 JIANING (JENNY) LIU (SB #305568)
 jianingliu@omm.com
 6 **O'MELVENY & MYERS LLP**
 Two Embarcadero Center, 28th Floor
 7 San Francisco, CA 94111
 Telephone: 415-984-8700
 8 Facsimile: 415-984-8701

9 Attorneys for Defendant
 10 NIAN TIC, INC.

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

14
 15 BARBARO TECHNOLOGIES, LLC,

16 Plaintiff,

17 v.

18 NIAN TIC, INC.,

19 Defendant.
 20

Case No. 3:18-cv-02955-RS (DMR)

**DEFENDANT NIAN TIC, INC.'S
 RESPONSIVE CLAIM
 CONSTRUCTION BRIEF**

Hon. Richard Seeborg
 Date: March 20, 2019
 Time: 10:00 a.m.
 Courtroom 3, 17th Floor

21
 22
 23
 24
 25
 26
 27
 28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION	1
II. BACKGROUND	1
III. LEGAL STANDARDS.....	1
IV. ARGUMENT	2
A. “graphics user interface (GUI) module” (’377 Patent)	2
B. “quantum imaging environment (QIE) module” (’377 Patent).....	3
1. A term susceptible to multiple, competing constructions is indefinite	4
2. “quantum imaging environment module” has no plain meaning.....	5
3. The claims do not inform the meaning of “quantum imaging environment module”	5
4. The specification does not provide reasonable certainty as to the meaning of “quantum imaging environment module”	5
C. “digital logic library” (’377 Patent)	9
D. “real-time information” (’377 Patent).....	13
E. “[three-dimensional] virtual thematic environment” (’377 and ’325 Patents).....	14
J. “the user’s geographical three-dimensional movement [through the three- dimensional virtual thematic environment]” (’325 Patent).....	14
1. “virtual thematic environment” is indefinite.....	14
2. “three dimensional virtual thematic environment” exists in physical space.....	16
F. “secondary application within the primary application” (’377 Patent).....	18
G. “enabling the user to control the at least one secondary application through a second user interface” (’377 Patent)	20
H. “world wide web” (’377 Patent)	21
I. “external sources” (’325 Patent)	24
V. CONCLUSION	25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Acacia Media Techs. Corp. v. New Destiny Internet Grp.,
2004 WL 5645597 (C.D. Cal. July 12, 2004) 10

Acacia Media Techs. Corp. v. New Destiny Internet Grp.,
405 F. Supp. 2d 1127 (N.D. Cal. 2005) 10

Bicon, Inc. v. Straumann Co.,
441 F.3d 945 (Fed. Cir. 2006)..... 26

Capital Sec. Sys., Inc. v. NCR Corp.,
725 F. App'x 952 (Fed. Cir. 2018) 4, 13

CCS Fitness, Inc. v. Brunswick Corp.,
288 F.3d 1359 (Fed. Cir. 2002)..... 9

Checkpoint Sys., Inc. v. Hangzhou Century Co.,
2014 WL 4930686 (N.D. Ohio Oct. 1, 2014) 12

Datamize, LLC v. Plumtree Software, Inc.,
417 F.3d 1342 (Fed. Cir. 2005)..... 16

Dow Chem. Co. v. Astro-Valcour, Inc.,
47 F. Supp. 2d 294 (N.D.N.Y. 1999) 19

Dow Chem. Co. v. Nova Chems. Corp.,
803 F.3d 620 (Fed. Cir. 2015)..... 4

Ecolab, Inc. v. Envirochem, Inc.,
264 F.3d 1358 (Fed. Cir. 2001)..... 20, 21

Enzo Biochem Inc. v. Applera Corp.,
780 F.3d 1149 (Fed. Cir. 2015)..... 26

Hill-Rom Servs., Inc. v. Stryker Corp.,
755 F.3d 1367 (Fed. Cir. 2014)..... 2, 21, 25

Hormone Research Found. v. Genentech,
904 F.2d 1558 (Fed. Cir. 1990)..... 9

Int'l Test Sols. Inc. v. Mipox Int'l Corp.,
2017 WL 1367975 (N.D. Cal. Apr. 10, 2017) 5

Interval Licensing, LLC v. AOL, Inc.,
766 F.3d 1364 (Fed. Cir. 2014)..... 2, 16

Markman v. Westview Instruments, Inc.,
52 F.3d 967 (Fed. Cir. 1995)..... 2

Nautilus, Inc. v. Biosig Instruments, Inc.,
572 U.S. 898 (2014)..... 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**TABLE OF AUTHORITIES
(continued)**

	Page
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	1, 22
<i>Pi-Net Int’l Inc. v. JPMorgan Chase & Co.</i> , 2014 WL 1997039 (D. Del. May 14, 2014).....	4
<i>Sonix Tech. Co. v. Publ’ns Int’l, Ltd.</i> , 844 F.3d 1370 (F.3d Cir. 2017).....	16
<i>Sumitomo Dainippon Pharma Co. v. Emcure Pharm. Ltd.</i> , 887 F.3d 1153 (Fed. Cir. 2018).....	9
<i>Teva Pharm. USA, Inc. v. Sandoz, Inc.</i> , 789 F.3d 1335 (Fed. Cir. 2015).....	4
<i>Thorner v. Sony Comput. Entm’t Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	24
<i>Transcend Med., Inc. v. Glaukos Corp.</i> , 2015 WL 5546988 (D. Del. Sept. 18, 2015).....	4

STATUTES

35 U.S.C. § 112(2)	2
--------------------------	---

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.