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APPENDIX A

NOTE: This disposition is nonprecedential.

United States Court of Appeals
for the Federal Circuit

APPLICATIONS IN INTERNET TIME, LLC,
Plaintiff-Appellant
v.
SALESFORCE, INC.,
Defendant-Appellee

2025-2026

Appeal from the United States District Court for the District of Nevada in No. 3:13-cv-00628-MMD-CLB, Judge Miranda M. Du.

Decided: March 16, 2026

MICHAEL DEVINCENZO, King & Wood Mallesons LLP, New York, NY, argued for plaintiff-appellant. Also represented by ANDREA PACELLI, CHARLES WIZENFELD; STEVEN C. SEREBOFF, SoCal IP Law Group LLP, Westlake Village, CA.

DEREK L. SHAFFER, Quinn Emanuel Urquhart & Sullivan, LLP, Washington, DC, argued for defendant-appellee. Also represented by KEVIN P.B. JOHNSON, RAY ROBERT ZADO, Redwood Shores, CA; SAM STEPHEN STAKE, OGNJEN ZIVOJNOVIC, San Francisco, CA.

Before LOURIE, CHEN, and STOLL, *Circuit Judges*.

LOURIE, *Circuit Judge*.

Applications in Internet Time, LLC ("AIT") appeals from a decision of the United States District Court for the District of Nevada dismissing its suit for lack of constitutional standing, *Applications in Internet Time, LLC v. Salesforce, Inc.*, No. 3:13-cv-00628-MMD-CLB, 2025 WL 961656 (D. Nev. Mar. 28, 2025) ("*Dismissal Decision*"), and denying its motion for equitable relief, *Applications in Internet Time, LLC v. Salesforce, Inc.*, No. 3:13-cv-00628-MMD-CLB, 2025 WL 2029841 (D. Nev. July 21, 2025) ("*Reconsideration Decision*"). For the following reasons, we *affirm*.

BACKGROUND

The main issue in this case is whether the district court erred in determining that AIT lacked constitutional standing to sue for infringement of U.S. Patents 7,356,482 ("the '482 patent") and 8,484,111 ("the '111 patent"). That in turn depends on whether a non-party, Alternative Systems, Inc. ("ASI"), had title to the patent application that would later issue as those patents at the time when ASI entered into an agreement to assign its rights to those patents to AIT.

ASI was founded in 1986 by Beverly Nelson, Douglas Sturgeon, and Anthony Sziklai. J.A. 4569. In 1997, ASI entered into a joint venture with a company (not a party in this appeal) to develop information management software technology. *Dismissal Decision*, 2025 WL 961656, at *1; J.A. 4569. The joint venture culminated in the development of new Integrated Change Management Unit ("ICMU") software, and in 1998 ASI filed a patent application seeking to protect that software. *See* J.A. 4570–71. Pursuant to the joint venture agreement, ASI owned all rights to the patents that might issue from the application via assignments executed by the named inventors. J.A. 500, 4556–61. That application matured into the '482 and '111 patents in 2008 and 2013, respectively. J.A. 16, 50.

The joint venture was terminated in 2002 pursuant to agreement ("the 2002 Agreement"). J.A. 3596–611. That Agreement contemplated a future contingent conveyance of patent rights to HMB, a party to be created by the Agreement, J.A. 3596, 3598, but that future contingent conveyance never actually occurred, J.A. 3231, 4571.

In 2006, ASI, Nelson, and other entities that were party to the joint venture entered into an agreement that "sold" the 2002 Agreement to Nelson ("the 2006 Agreement"). In relevant part, the 2006 Agreement recited "[t]hat the . . . 2002 Agreement is hereby sold to Nelson." J.A. 3591. It also stated that "all right, title, interest, and liability (including financial liability) set forth in the . . . 2002 Agreement shall transfer in whole to Nelson." *Id.*

Meanwhile, in 2005, Nelson and Sturgeon formed AIT, the plaintiff in this case. J.A. 4571. In 2012, Sturgeon, acting on behalf of ASI, entered into an agreement to assign the patent rights to AIT ("the 2012 Assignment"). *See* J.A. 4562–66. The following year, in 2013, both patents having issued, AIT sued Salesforce, Inc. ("Salesforce") in the District of Nevada, asserting infringement of the '482 and '111 patents. *See* J.A. 89.

The litigation proceeded through discovery and motion practice, most of which is of no consequence to this appeal. But, in 2022, Salesforce filed a motion to dismiss for lack of standing and a motion for summary judgment that the patent claims were invalid as anticipated and obvious, and that its accused products were not infringing. *Applications in Internet Time, LLC v. Salesforce.com, Inc.*, 691 F. Supp. 3d 1223, 1227 (D. Nev. 2023). The district court granted the motion for summary judgment on each ground asserted by Salesforce and denied the motion to dismiss for lack of standing as moot. *Id.* at 1253. AIT appealed the grant of summary judgment to this court, and we vacated and remanded on the issue of anticipation. *Applications in Internet Time, LLC v. Salesforce, Inc.*, 2024 WL 4456271, at *1, *6 (Fed. Cir. Oct. 10, 2024).

On remand, Salesforce filed a renewed motion to dismiss for lack of standing, which the district court granted. *See Dismissal Decision*, 2025 WL 961656, at *1. The district court determined that the 2006 Agreement had unambiguously transferred all the patent rights to Nelson, so that, pursuant to the 2012 Assignment, ASI had no rights remaining to transfer to AIT. *Id.* at *3, *5. AIT therefore had no rights in the

asserted patents at the outset of the lawsuit and lacked constitutional standing to sue under them. *Id.* The district court also rejected AIT's argument that Nelson effectively had transferred her patent rights to AIT. *Id.* at *5. AIT filed a motion for reconsideration and equitable relief, under Federal Rule of Civil Procedure 17(a)(3) ratification or the doctrine of contract reformation, which the district court denied. *Reconsideration Decision*, 2025 WL 2029841, at *2–3.

AIT timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

STANDARD OF REVIEW

"[Q]uestions of the district court's jurisdiction—upon which this court's jurisdiction depends—are always determined under Federal Circuit law." *Schreiber Foods, Inc. v. Beatrice Cheese, Inc.*, 402 F.3d 1198, 1202 (Fed. Cir. 2005). We review a district court's dismissal for lack of standing *de novo*, and we review factual determinations relevant to standing for clear error. *Advanced Video Techs. LLC v. HTC Corp.*, 879 F.3d 1314, 1317 (Fed. Cir. 2018) (citations omitted).

We review matters of procedural law that do not implicate issues of patent law under the standard of review of the regional circuit, here the Ninth Circuit. *See Landmark Screens, LLC v. Morgan, Lewis, & Bockius, LLP*, 676 F.3d 1354, 1361 (Fed. Cir. 2012); *Lans v. Digital Equip. Corp.*, 252 F.3d 1320, 1328 (Fed. Cir. 2001). The Ninth Circuit reviews denials of equitable relief, such as Rule 17(a)(3) ratification and contract reformation, for an abuse of discretion. *See Forest Grove Sch. Dist. v. T.A.*, 523 F.3d 1078, 1084 (Fed. Cir. 2008);

Jones v. L.V. Metro. Police Dep't, 873 F.3d 1123, 1128 (9th Cir. 2017).

Regarding interpretation of a contract, "[t]he question of who owns the patent rights and on what terms typically is a question exclusively for state courts." *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 583 F.3d 832, 841 (Fed. Cir. 2009) (citation modified). The parties agree that California law controls interpretation of the 2006 Agreement. Open. Br at 31; Resp. Br. at 34. "Under California state law, contracts are interpreted without deference on appeal." *Tex. Instruments Inc. v. Tessera, Inc.*, 231 F.3d 1325, 1329 (Fed. Cir. 2000); *see also Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1320 (Fed. Cir. 2017) (applying California law).

DISCUSSION

AIT argues that the district court erred in dismissing its suit for lack of constitutional standing and abused its discretion in denying its motion for equitable relief pursuant to Rule 17(a)(3) and the doctrine of contract reformation. Open. Br. at 18, 40. We address each argument in turn.

I

In order to have constitutional standing, a plaintiff must establish injury-in-fact, causation, and redressability. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). In patent infringement cases, the injury-in-fact requirement is met when the plaintiff has an exclusionary right in the asserted patent(s). *Intell. Tech LLC v. Zebra Techs. Corp.*, 101 F.4th 807, 813–14 (Fed. Cir. 2024).

Under California law, "interpretation of a contract must give effect to the mutual intention of the parties." *MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1212 (Cal. 2003) (citation modified). "Such intent is to be inferred, if possible, solely from the written provisions of the contract." *Id.* at 1213. "California has a liberal parol evidence rule: It permits consideration of extrinsic evidence to explain the meaning of the terms of a contract even when the meaning appears unambiguous." *Foad Consulting Grp., Inc. v. Azzalino*, 270 F.3d 821, 826 (9th Cir. 2001) (citing *City of Manhattan Beach v. Superior Ct.*, 13 Cal. 4th 232, 246 (1996)).

A

In this court, on appeal, AIT argues that the 2006 Agreement was not a present patent assignment to Nelson. It asserts that the agreement itself was sold, not the assets referred to in the agreement.

We disagree. The 2006 Agreement did convey all patent rights to Nelson. It recites:

> [T]he . . . 2002 Agreement *is hereby sold* to Nelson by the Parties (exclusive of Nelson) without reservation of any provision of the . . . 2002 Agreement. The waiver of reservation of any provision shall be irrevocable, complete and total; *all right, title, interest, and liability (including financial liability) set forth in the . . . 2002 Agreement shall transfer in whole to Nelson*. Further, Nelson shall have the sole and exclusive right to modify, terminate or otherwise discard

> Sections A, B and C of the . . . 2002 Agreement.

J.A. 3591 (emphases added). In turn, "Section A" of the 2002 Agreement recites:

> As soon as practicable following the date of signing of this Agreement, ASI will transfer certain assets of ASI (the "ASI Assets") to HMB . . . .
>
> . . .
>
> The ASI Assets are . . . *all* . . . *intellectual property rights* (including without limitation *patent*, trademark, copyright and other rights) . . . .

J.A. 3596 (emphases added). Because the 2006 Agreement transferred "all *right*, title, interest, and liability . . . set forth in the . . . 2002 Agreement" to Nelson, it therefore included the "intellectual property *rights*" set forth in the 2002 Agreement. Thus, as the patents were then the property of Nelson, ASI had no patent rights to transfer to AIT in 2012. AIT therefore had no exclusionary patent rights at the inception of the lawsuit and lacked constitutional standing to sue under them.

AIT's arguments to the contrary are unconvincing. AIT first argues that any transfer of patent rights to Nelson by the 2006 Agreement was a future contingent transfer which never occurred, because the "shall transfer" language of the 2006 Agreement denotes a future act. Open. Br. at 24–26. However, fatal to AIT's argument is that it reads one

sentence of the 2006 Agreement in isolation, not in the context of the entire agreement. *See* Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."). Immediately preceding the "shall transfer" sentence is a sentence reciting "[t]hat the . . . 2002 Agreement *is hereby sold* to Nelson." J.A. 3591 (emphasis added). That language conveys a present transfer of the 2002 Agreement to Nelson, which includes "all right, title, interest, and liability" put forth in the next sentence. The 2006 Agreement was therefore not a future contingent transfer of patent rights to Nelson.

Relatedly, AIT argues that the 2006 Agreement affecting a present transfer of patent rights is irreconcilable with Nelson having, under the 2006 Agreement, "the sole and exclusive right to modify, terminate or otherwise discard" certain sections of the 2002 Agreement, including the "ASI Assets" and the future contingent transfer of the patent rights to HMB. *See* Open. Br. at 26–28. According to AIT, Nelson's ability to modify sections of the 2002 Agreement shows that there was no present transfer of patent rights. But AIT's argument again ignores the language "[t]hat the . . . 2002 Agreement is *hereby sold* to Nelson." J.A. 3591 (emphasis added). The 2006 Agreement specifying that Nelson has exclusive control over the assets she is gaining (that is, the sole right to modify or terminate certain terms of the 2002 Agreement) is not inconsistent with the 2006 Agreement affecting a present transfer to her of the patent rights.

Finally, AIT argues that the district court erred in declining to consider extrinsic evidence in concluding that the 2006 Agreement transferred all patent rights to Nelson. Open. Br. at 32–33. The district court indeed stated that it declined to consider extrinsic evidence, but it did acknowledge Sturgeon's testimony that the 2006 Agreement sold "[e]verything" to Nelson, and cast doubt on his later declaration attempting to walk back his testimony, because that later declaration was self-serving and contradictory. *Dismissal Decision*, 2025 WL 961656, at *4 (citing J.A. 3233–34, 4571–72).

While it appears to be true that California law requires extrinsic evidence to interpret terms that are "reasonably susceptible" to a party's interpretation, and can even be used to determine whether a term is "reasonably susceptible" to such an interpretation, extrinsic evidence cannot be used to alter or add terms to a contract. *Bionghi v. Metro. Water Dist. of S. Cal.*, 70 Cal. App. 4th 1358, 1364–65 (Cal. Ct. App. 1999); *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 645 (Cal. 1968); *see Foad*, 270 F.3d at 826 (explaining that, under California contract law, extrinsic evidence can uncover "a latent ambiguity in [a] contract").

To the extent that the district court properly evaluated extrinsic evidence to determine if there was a "latent ambiguity" in the contract terms, it correctly indicated that Sturgeon's testimony supports the conclusion that the 2006 Agreement transferred the patent rights to Nelson. Indeed, Sturgeon testified, "Everything in [the 2002] [A]greement was transferred to [Nelson]." J.A. 3233. Sturgeon was then asked, "And

that includes what is defined as the ASI assets?" to which he responded, "Everything." J.A. 3234. That testimony bolsters the conclusion that the 2006 Agreement transferred the patent rights to Nelson. The district court's discrediting Sturgeon's later contradictory declaration was not clearly erroneous.

B

Next, AIT argues that, even assuming that the 2006 Agreement did transfer all rights in the asserted patents to Nelson, the district court clearly erred in determining that Nelson did not consent to the 2012 Assignment, thereby transferring her patent rights to AIT. Open. Br. at 37–39. We disagree.

In support of its argument, AIT points only to Sturgeon's declaration that he is in "constant communication" with Nelson "regarding the business of AIT and she is informed of all material decisions of the company," which "has included the assignment of the . . . patents from ASI to AIT," J.A. 4572, as well as the general fact that Nelson and Sturgeon had sole ownership and control of ASI and AIT during the relevant time, *see, e.g.*, J.A. 4569. But that is not persuasive evidence showing that Nelson consented to the 2012 Assignment. The district court thus did not clearly err in determining that Nelson did not exercise her right to modify the 2002 Agreement via her consent to the 2012 Assignment such that AIT acquired the patent rights.

AIT also argues that the district court improperly placed the burden on it to show that the 2012 Assignment was valid. Open. Br. at 38. It is true that the recording of an assignment with the Patent Office

"creates a presumption of validity as to the assignment," and the burden to rebut that presumption falls "on one challenging the assignment." *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1327–29 (Fed. Cir. 2010). But Salesforce rebutted the presumption that the 2012 Assignment was valid by showing that AIT had no rights to transfer in 2012, as explained above. Notwithstanding any presumption (that was overcome in this case), the burden falls on AIT to show it had constitutional standing. *See Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005).

For the foregoing reasons, we conclude that the district court correctly determined that AIT lacked constitutional standing and therefore correctly granted Salesforce's motion to dismiss.

II

We last address AIT's contention that the district court abused its discretion in denying AIT's motion, filed after the case was dismissed, for equitable relief pursuant to Rule 17(a)(3) or contract reformation under California contract law. *Reconsideration Decision*, 2025 WL 2029841, at *2.

Under FRCP 17(a)(3):

> The [district] court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.

And under California contract law:

> When, through . . . mutual mistake of the parties, . . . a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Cal. Civ. Code § 3399.

The district court denied both forms of relief, explaining that AIT's arguments based on Rule 17(a)(3) and contract reformation "could have been raised in connection with [AIT's] opposition to the motion to dismiss," and the court was under no obligation to consider such newly-raised arguments. *Reconsideration Decision*, 2025 WL 2029841, at *2. On the merits, the district court determined that neither form of relief could be used to cure a constitutional standing defect present at the outset of the lawsuit. *Id.*

We conclude that the district court did not abuse its discretion in denying either form of equitable relief. "A court may exercise jurisdiction only if a plaintiff has standing to sue on the date it files suit." *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1364 (Fed. Cir. 2010) (citing *Keene Corp. v. United States*, 509 U.S. 200, 207 (1993)). "[I]n order to assert standing for patent infringement, the plaintiff must demonstrate that it held enforceable title to the patent *at the inception of the lawsuit*." *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1309 (Fed. Cir. 2003) (emphasis in original). As explained above, AIT lacked constitutional standing on the date it filed suit. AIT has cited no cases

under our precedent, nor have we found any, that indicate that a party can cure a lack of constitutional standing pursuant to Rule 17(a)(3) ratification or contract reformation. The district court therefore did not abuse its discretion in denying either form of relief.

CONCLUSION

We have considered AIT's remaining arguments but find them unpersuasive. For the foregoing reasons, we *affirm* the decision of the district court.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

APPLICATIONS IN INTERNET TIME, LLC,
Plaintiff,

v.

SALESFORCE, INC.,
Defendant.

Case No. 3:13-cv-00628-MMD-CLB

ORDER

I. SUMMARY

In this patent infringement action, the United States Court of Appeals for the Federal Circuit reversed and vacated in part prior dispositive rulings and remanded to this Court. (ECF Nos. 457, 459; *see also* ECF Nos. 455, 456 (Federal Circuit orders).) Before the Court is Defendant Salesforce, Inc.'s previously unresolved challenge to Plaintiff Applications in Internet Time, LLC's ("AIT") standing at the time it originally

filed this case in 2013.[1] (ECF No. 281 ("Motion").)[2] The Court held a hearing on the Motion on March 4, 2025 (the "Hearing"). (ECF Nos. 464 (order setting Hearing), 469.) Because the Court finds that Alternative Systems, Inc. ("ASI") sold the patents-in-suit to Beverly G. Nelson before later purportedly assigning them to Plaintiff, and for the reasons further explained below, the Court finds Plaintiff lacked constitutional standing at the time it filed this case and accordingly dismisses the action without prejudice.

II. BACKGROUND[3]

Plaintiff AIT alleges that Defendant infringes U.S. Patent Nos. 7,356,482 ("the 482 Patent") and 8,484,111 ("the 111 Patent") (collectively, "Patents-in-Suit"). (ECF No. 1.) The Patents-in-Suit claim priority to U.S. Patent Appl. No. 09/215,898, filed on December 18, 1998. (ECF No. 306-2 at 8.) On September 13, 2012, ASI assigned "the entire right, title, and interest in and to" the Patent-in-Suits to Plaintiff. (*Id.*)

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[1] In the order granting summary judgment in favor of Defendant, the Court denied Defendant's motion to dismiss under Rule 12(b)(1) (ECF No. 281) as moot. (ECF No. 408 at 47.)

[2] The parties filed various motions to seal that United States District Judge Robert C. Jones granted before this case was reassigned to this Court. (ECF Nos. 408 (granting motions to seal), 446 (reassigning case).) The Court cites to the sealed, unredacted versions of the Motion (ECF No. 283-1), response (ECF No. 306-2), and reply (ECF No. 334) in this order.

[3] The Motion raises two grounds to challenge Plaintiff's standing. Because the Court resolves the Motion on the second ground, the Court only recites the background as pertinent to that ground.

Beverly Nelson is a member of AIT. (ECF No. 306-4 at 6.) Since 2012, AIT has had only two members: Nelson and Douglas H. Sturgeon. (*Id.*) In 2012, Sturgeon signed an assignment of the Patent-in-Suits to AIT in his capacity as President of ASI. (ECF No. 305-5 at 11-13.)

In June 1997, ASI and Levine-Fricke-Recon-Group, Inc. ("LFRG") entered into a joint venture and formed a new entity called LFR Technologies, LLC ("LFRT") for the purpose of, *inter alia*, the further development and marketing of the Software Technology as defined in the parties' Licensing Agreement. (ECF No. 283-8; ECF No. 306-4 at 3.)

On April 24, 2002, ASI, LFRT, LFRG and various other entities and individuals entered into an agreement—titled a "Letter Agreement Re: VerticalSuite Transfer of Assets and Related Matter"—that in part provided for the creation of a limited liability company called International Internet Partners, LLC ("IIP"). (ECF No. 283-19 ("2002 Letter Agreement").) The Letter Agreement provided that "ASI will transfer certain assets of ASI (the "ASI Assets"), and HMB "will contribute the ASI Assets to IIP, LLC" . . . in exchange for membership interests in IIP. (*Id.* at 1.) The 2002 Letter Agreement further provides for conversions of debts and liabilities and transfer of employees. (*Id.* at 1-3.) However, except for the "migration from LFR Technologies to VerticalSuite, Inc.," the actions envisioned by the parties to the 2002 Letter Agreement did not occur. (ECF No. 283-15 at 66.)

On November 9, 2006, the parties to the 2002 Letter Agreement and Nelson entered into "Agreement

for Sale" where they agreed to sell the 2002 Letter Agreement to Nelson. (ECF No. 283-18 ("2006 Agreement for Sale").)

III. DISCUSSION

The Court is persuaded by the second argument Salesforce raises in its Motion—that AIS sold the Patents-in-Suit to Nelson before later reassigning them to Plaintiff. (ECF No. 283-1 at 11-13.) The Court declines to address Defendant's first argument regarding Judith Popowski's Employee Intellectual Property Rights and Confidentially Agreement with LFRT. The Court also declines to address whether Plaintiff timely raised a statutory standing argument.

A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Lack of Article III standing is a jurisdictional defect. *See* U.S. Const., Art. III, § 2 (limiting a federal court's power to "cases and controversies"); *Braunstein v. Ariz. Dep't of Transp.*, 683 F.3d 1177, 1184 (9th Cir. 2012) (emphasizing that an action brought without standing does not constitute a case or controversy). A court may dismiss an action based on constitutional standing defects *sua sponte*. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). A party may also seek dismissal of a claim or action for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See also* Fed. R. Civ. P. 12(h)(3) (providing that a jurisdictional defense of this type cannot be waived and may be raised at any time).

As with other jurisdictional requirements, "[t]he party invoking federal jurisdiction, [here AIT], bears the

burden of establishing [the constitutional minimum of standing]." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Three elements must be met to establish standing—the plaintiffs must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 330 (2016) (citing *Lujan*, 504 U.S. at 560-61). These elements are an indispensable part of a plaintiff's case and therefore "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561.

Here, Salesforce challenges the injury-in-fact element. The "irreducible constitutional minimum of an injury in fact" requires a showing "that [AIT] retained an *exclusionary* right—i.e., infringement would amount to an invasion of [AIT's] legally protected interest." *Intellectual Tech LLC v. Zebra Tech. Corp.* 101 F.4th 807, 813 (Fed. Cir. 2024) (emphasis in original) (clarifying the distinction between a constitutional injury-in-fact inquiry and the statutory standing inquiry under 35 U.S.C. § 281).[4] "In general, the question for the injury-in-fact threshold [for constitutional standing] is whether a party has *an* exclusionary right." *Id.* at 814 (emphasis in original) (citing *Univ. of S. Fla. Rsch.*

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[4] The briefing on the Motion was completed in 2022. AIT referenced this more recent Federal Circuit decision at the Hearing.

Found., Inc. v. Fujifilm Med. Sys. U.S.A., Inc., 19 F.4th 1315, 1323 (Fed. Cir. 2021)).

Salesforce argues ASI no longer had exclusionary rights to the Patents in 2006[5] because of the sale of the 2002 Letter Agreement to Nelson, meaning its assignment of those rights to AIT in 2012 was null and void. Plaintiff counters that the 2002 Letter Agreement and the 2006 Agreement for Sale "do not operate as assignments—rather, they concern the formation of an entity and the distribution of proceeds." (ECF No. 306-2 at 22.) The Court agrees with Defendant.

The question of whether a contractual provision effectuates an assignment of a patent is a "matter of federal law" because the issue is "so intimately bound up with the question of standing in patent cases." *DDB Techs., L.L.C. v. MLB Advanced Media, L.P.*, 517 F.3d 1284, 1290 (Fed. Cir. 2008). "Applying federal law, [the Federal Circuit has held] that whether an assignment of patent rights in an agreement . . . is automatic, requiring no further act on the part of the assignee, or merely a

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[5] This is assuming the Court rejects Defendant's primary argument that the inventors of the Patents-in-Suit assigned their rights to the inventions to LFRT through their respective employment agreements with LFRT executed in 1997 before the Patents-in-Suit's assignment to ASI in December 1998. (ECF No. 283-1 at 15-19.) The Court declines to address this argument because the resolution of the alternative argument is dispositive of the constitutional standing challenge.

promise to assign depends on the contractual language."[6] *Id.*

Focusing on the contractual language here, there is no dispute that at the time of the 2002 Letter Agreement, the "'ASI Assets'" [as defined in that agreement] included the Patents-in-Suit." (ECF No. 306-2 at 23.) The 2006 Agreement for Sale contains the following key paragraph:

> 1. That the April 24, 2002 Agreement is hereby sold to Nelson by the Parties (exclusive of Nelson) without reservation of any provision of the April 24, 2002 Agreement. The waiver of reservation of any provision shall be irrevocable, complete and total; all right, title, interest, and liability (including financial liability) set forth in the April 24, 2002 Agreement shall transfer in whole to Nelson. Further, Nelson shall have the sole and exclusive right to modify, terminate or otherwise discard Sections A, Band C of the April 24, 2002 Agreement.

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[6] The parties seem to agree that California law applies to the Court's interpretation of the 2002 Letter Agreement and the 2006 Agreement for Sale. (*See* ECF No. 306-2 at (17 (contending California law applies to interpretation of the licensing agreement between ASI and LFRT); ECF No. 283-1 at 19 (citing California law); ECF No. 334 at 15 (citing California law); *but see* ECF No. 306-2 at 23-27 (citing to federal law to support interpretation of the 2002 Letter Agreement and the 2006 Agreement for Sale).)

(ECF No. 283-18 at 1.) Because the Patents-in-Suit are undisputedly ASI Assets included in the 2002 Letter Agreement, they constitute rights/title set forth in that agreement, and thus the 2006 Letter Agreement transferred ownership to Nelson. To find otherwise would, as Defendant also argues, read out the language "set forth in" from the 2006 Agreement for Sale, and the principles of contract interpretation require the Court to give effect to all the words in the agreement. *See In re Crystal Properties, Ltd., L.P.*, 268 F.3d 743, 748 (9th Cir. 2001) (noting a court should avoid interpretating a contract in a manner that "reject[s a word or term] as meaningless or surplusage") (quoting *Cree v. Waterbury*, 78 F.3d 1400, 1405 (9th Cir.1996)); *see also In re Tobacco Cases I*, 186 Cal. App. 4th 42, 49 (2010) (same). The 2006 Agreement for Sale, as Defendant argues, is an automatic present assignment, not an agreement to assign some rights in the future, in light of the statement that "all right, title, [and] interest . . . set forth in the April 24, 2002 Agreement shall transfer in whole to Nelson" (ECF No. 283-18 at 1). *See DDB Tech.*, 517 F.3d at 1290 (finding contractual language that the inventor "agrees to *and does hereby grant and assign*" all rights in future inventions amounted to an express assignment of rights to future inventions, not a mere agreement to assign); *Speedplay, Inc, v. Bebop, Inc.*, 211 F.3d 1245, 1253 (Fed. Cir. 2000) (finding contractual language automatically assigned title to the patent at issue by providing that all inventions covered by the agreement "shall belong exclusively to [employer] and [employee] hereby conveys, transfers and assigns to [employer] . . . all right, title and interest in and to Inventions"). The 2006 Agreement for Sale is

unambiguous that the automatic transfer to Nelson included whatever comprised the liabilities and assets in the 2002 Letter Agreement—and the Patents-in-Suit are part of the defined ASI Assets.[7]

Plaintiff's insistence that paragraph 1 of the 2006 Agreement for Sale "is not a patent assignment and was not intended to be" fails to persuade the Court. (ECF No. 306-2 at 24.) A transfer or assignment of a patent does not require specific, pre-determined wording that a patent is being assigned. *See DDB Techs*, 517 F.3d at 1290. As Plaintiff acknowledges, the 2006 Agreement for Sale "is for the sale of the 2002 Letter Agreement." (ECF No. 306-2 at 24.) And as the Court has found, the 2002 Letter Agreement included the ASI Assets.

The parties separately point to Sturgeon's deposition testimony and declaration to support their respective interpretations as to the operation of these two agreements. Sturgeon testified in pertinent part:

> [STURGEON:] Everything in this letter agreement was transferred to Beverly. So all of the slicing of the pie, for lack of a better term, that was detailed in Exhibit 20 [2002 Letter Agreement] was sold to Beverly for a dollar.

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[7] Plaintiff points to the absence of the filing of an assignment of the Patents-in-Suit to Nelson when the 2012 assignment from ASI to AIT was filed with the USPTO (ECF No. 305-5), as evidence that no assignment occurred. But at the Hearing, Plaintiff conceded that filing with the USPTO is not required.

> Q[:] So that's everything that is referenced in 10:50AM Exhibit 20?
>
> A[:] Correct.
>
> Q[:] And that includes what is defined as the ASI assets?
>
> MR. DeVINCENZO: Objection, form.
>
> [STURGEON]: Everything.

(ECF No. 283-15 at 70-71.) Thus, Defendant argues that as Sturgeon explained under oath, "everything" in the 2002 Letter Agreement, including the ASI Assets, was transferred to Nelson under the 2006 Agreement for Sale.

In response to the Motion, Plaintiff offered a declaration from Sturgeon in which he attempts to retreat from his deposition testimony. Sturgeon explained in this declaration that when he testified that the 2006 Agreement for Sale sold "everything" to Nelson, he "did not intend to suggest that the 2006 Agreement for Sale effected an assignment of the [Patent-in-Suits] to Ms. Nelson." (ECF No. 306-4 at 5.) This assertion clearly contradicts Sturgeon's deposition testimony. As noted, during the deposition, when asked whether everything "includes what is defined as the ASI Assets," Sturgeon responded unequivocally: "Everything." (ECF No. 283-15 at 71.) Plaintiff cannot offer Sturgeon's declaration to contradict his deposition testimony in an attempt to oppose dismissal. *See Baluma, S.A. v. Davydov*, Case No. 2:20-cv-001552-KJD-NJK, 2022 LEXIS 53006 (D. Nev. Mar. 24, 2022) ("[A] party cannot create an issue of fact by an affidavit

contradicting his prior deposition testimony.") (quoting *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991)); *see also Block v. City of Los Angeles*, 253 F.3d 410, 419 n. 2 (9th Cir. 2001) (rejecting a self-serving declaration that contradicted stipulated facts).

More importantly, the Court declines Defendant and Plaintiff's invitation to consider extrinsic evidence of the parties' intent where, as here, the agreements are unambiguous. *See U.S. Cellular Inv. Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 934-37 (9th Cir. 2002) (discussing parol evidence); *Ticor Title Ins. Co. v. Emps. Ins. of Wausau*, 40 Cal. App. 4th 1699, 1707 (1995). Thus, while the Court recites the parties' argument as to Sturgeon's deposition testimony and declaration, the Court does not consider them in finding that the 2006 Agreement for Sale effectuated a transfer of the Patents-in-Suit to Nelson. For the same reason, the Court declines to consider Plaintiff's arguments about Nelson and Sturgeon's intent as demonstrated through their actions from 2005 through 2012.[8] (ECF No. 306-2 at 26).

Plaintiff further argues that even if the Patents-in-Suit were transferred to Nelson under the 2006 Agreement for Sale, Nelson effectively transferred her rights to the Patents-in-Suit to AIT. (ECF No. 306-2 at

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[8] Plaintiff points to Nelson and Sturgeon's actions, including their formation of AIT in February 2005, the fact that they are sole members of AIT, and ASI's assignment of the Patents-in-Suit to AIT in 2012, to argue they acted in line with Plaintiff's interpretation of the 2006 Agreement for Sale. (ECF No. 306-2 at 26.)

27-28.) Nelson and Sturgeon established AIT, and consistent with Nelson's right to modify certain sections of the 2002 Letter Agreement, as Plaintiff argues, "ASI transferred the entire 'right, title and interests'" to the Patents-in-Suit to AIT. (*Id.*) Here, Plaintiff essentially asks the Court to infer that the transfer of the Patents-in-Suit from ASI to AIT—an entity that Nelson jointly established with Sturgeon—reflects that Nelson exercised her right to modify the terms of the 2002 Letter of Agreement, because ASI assigned the Patents-in-Suit to Plaintiff. But as Salesforce aptly points out, Plaintiff offers no evidence that Nelson exercised that right or authorized ASI to assign the Patents-in-Suit to Plaintiff. (ECF No. 334 at 15.) To be clear, Plaintiff does not offer Nelson's declaration, or any admissible evidence, to show that Nelson directly modified or terminated Section A of the 2002 Letter Agreement or authorized ASI to transfer the Patents-in-Suit to AIT. Indeed, the 2012 assignment upon which Plaintiff relies was executed by Sturgeon, not Nelson; and Plaintiff offers no evidence that Sturgeon was authorized to act on Nelson's behalf. (ECF No. 305-5 at 11-13.) Plaintiff has failed to demonstrate by a preponderance of the evidence that Nelson exercised her right under the 2002 Letter Agreement and assigned her right to the Patents-in-Suit to ASI to allow ASI's assignment to Plaintiff.

In sum, the Court agrees with Defendant that ownership of the Patents-in-Suit transferred to Nelson in 2006, so the 2012 assignment from ASI to AIT (ECF No. 305-5 at 11-14) upon which AIT asserts standing (ECF No. 283-1 at 6 (citing discovery response)) was null and void.

IV. CONCLUSION

The Court notes that the parties cited several cases and made several arguments not discussed above. The Court did not address these cases and arguments because they do not materially affect the Court's resolution of the Motion.

It is therefore ordered Defendant's motion to dismiss for lack of subject matter jurisdiction (ECF No. 281) is granted.

It is further ordered that Defendant's motion to compel (ECF No. 466) is denied as moot.

It is further ordered that this case is dismissed, in its entirety, without prejudice.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 28th Day of March 2025.

/s/ Miranda M. Du
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

APPLICATIONS IN INTERNET TIME, LLC,
Plaintiff,

v.

SALESFORCE, INC.,
Defendant.

Case No. 3:13-cv-00628-MMD-CLB

ORDER

I. SUMMARY

This patent infringement action spanned over a decade, including appellate proceedings before the United States Court of Apeals for the Federal Circuit. (ECF Nos. 450, 455, 456 (Federal Circuit orders).) Following remand, the Court reinstated Defendant Salesforce, Inc.'s motion challenging Plaintiff Applications in Internet Time, LLC's standing (ECF No. 281). After holding oral argument (ECF No. 469 ("the Hearing")), the Court granted the motion, dismissing this action without prejudice on the basis that Plaintiff lacked constitutional standing at the time it

filed this case. (ECF No. 471 ("Dismissal Order")[1].) Before the Court is Plaintiff's motion for reconsideration. (ECF No. 476 ("Motion")[2].) Because the Motion raises arguments that could have been raised in opposition to the motion to dismiss and rehashes arguments that were already raised, and for the reasons further explained below, the Court denies the Motion.

II. DISCUSSION[3]

Plaintiff asserts three arguments in seeking relief from the Dismissal Order, contending that (1) the Court should modify the Dismissal Order under Fed. R. Civ. P. 17(a)(3); (2) the Court should reform the 2006 Agreement for Sale to correct any mistaken assignment of the Patents-in-Suit to Beverly Nelson; or (3) the Court should reconsider its finding that ASI no longer had exclusionary rights to the Patents-in-Suits in 2006

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[1] The Dismissal Order granted Defendant's motion to dismiss and directed the Clerk of Court to enter judgment accordingly and close the case. (ECF No. 471.) However, as Plaintiff points out in its Motion, Defendant's counterclaims are still pending. (ECF No. 476 at 2.) Accordingly, the Court erred in directing entry of final judgment and case closure. The Court will order that this case be reopened.

[2] Defendant filed a response (ECF No. 479) and Plaintiff filed a reply (ECF No. 480). The Court denies Plaintiff's request for oral argument because it finds oral argument to be unnecessary. *See* LR 78-2 ("All motions may be considered and decided with or without a hearing.").

[3] The Court incorporates the facts discussed in the background section of the Dismissal Order (ECF No. 471), including the terms defined in that order.

because of the sale of the 2002 Letter Agreement to Nelson, rendering ASI's assignment of the Patents-in-Suits to Plaintiff in September 2012 null and void. (ECF No. 476.) Defendant responds that these arguments are legally infirm and do not provide a valid reason for reconsideration. The Court agrees with Defendant.

As a preliminary matter, Plaintiff presents its first two arguments independently from its request that the Court reconsider the Dismissal Order.[4] Here, Plaintiff asks for relief under Rule 17(a)(3) based on Nelson's ratification of this action, and then asks the Court to reform the 2006 Agreement for sale to "align the Agreement with the parties' true intent." (ECF No. 476 at 6-8.) But procedurally, Plaintiff's claims have been dismissed, so these forms of relief are no longer available unless the Court grants Plaintiff's request for reconsideration and then considers these two arguments. Accordingly, the Court addresses Plaintiff's arguments in the context of the relevant procedural posture, where Plaintiff's claims have all been dismissed and only Defendant's counterclaims remain. The Court begins with the procedural rules under which Plaintiff seeks reconsideration of the Dismissal Order.

In its reply, Plaintiff clarifies that it is seeking reconsideration under Federal Rules of Civil Procedure 59 and 60, although Plaintiff does not identify which

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[4] As Defendant points out, Plaintiff did not reference the procedural rules governing it Motion until it discusses its third ground, relating to reconsideration of the Dismissal Order. (ECF Nos. 479 at 16, 480 at 6-7.)

specific provision of each rule applies. (ECF No. 480 at 6.) Reconsideration under Rule 59(e) is appropriate if this Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law."[5] *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (addressing the standard for reconsideration under Rule 59(e)). But Plaintiff does not argue that it meets any of these grounds.[6] Regardless, Plaintiff acknowledges that in seeking reconsideration, it must offer "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." (ECF No. 476 at 15 (citing *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003)).)

Plaintiff asks for equitable relief under Rule 17(a)(3) and under California state law doctrine of contract reformation. But these arguments could have

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[5] Plaintiff recites this standard in its Motion, so Plaintiff appears to be seeking relief under Rule 59(e). (ECF No. 476 at 16.)

[6] Plaintiff offers Nelson's declaration to show she "has ratified the litigation, authorized continuation of this action, and agrees to be bound by the lawsuit's results." (ECF Nos. 476 at 9, 476-1.) However, Plaintiff does not appear to contend that Nelson's declaration qualifies as "newly discovered evidence" under Rule 59(e). Nor could the declaration be considered "newly discovered evidence," as Defendant points out. (ECF No. 479 at 18-19.) Moreover, reconsideration is not justified where new evidence could have been discovered prior to the court's ruling. *See Hagerman v. Yukon Energy Corp.*, 839 F.3d 407, 413-14 (8th Cir. 1988); *see also E.E.O.C. v. Foothills Title*, 956 F.2d 277 (10th Cir. 1992).

been raised in connection with Plaintiff's opposition to the motion to dismiss. Plaintiff did not offer Nelson's declaration to contend that she has authorized Plaintiff to continue the litigation (as relevant to relief under Rule 17(a)(3)), nor did Plaintiff ask the Court to reform the 2006 Agreement for Sale during proceedings relating to Defendant's dismissal motion. Because Plaintiff failed to raise these arguments during the briefing on that prior motion or at the Hearing, the Court declines to consider Plaintiff's request for equitable relief. *See Hopkins v. Andaya*, 958 F.2d 881, 889 n. 5 (9th Cir. 1992) (noting that a district court may decline to consider claims and issues that were not raised until a motion for reconsideration), *impliedly overruled on other grounds in Federman v. Cty. of Kern*, 61 F. App'x 438, 440 (9th Cir. 2003). Indeed, it is not an abuse of discretion to refuse to consider new arguments in a reconsideration motion even though "dire consequences" might result. *See Schanen v. United States Dept. of Justice*, 762 F.2d 805, 807-08 (9th Cir. 1985).

Moreover, even if the Court considers these newly-raised equitable arguments, the Court agrees with Defendant that these two grounds cannot cure the absence of constitutional standing at the inception of the lawsuit. Rule 17(a)(3) provides, in pertinent part, that "[t]he court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify [or] join" the action. A party may cure a defect in prudential standing under Rule 17. *See Dunmore v. United* States, 358 F.3d 1107, 1112 (9th Cir. 2004) (noting that a plaintiff had

constitutional standing, but lacked prudential standing, which he could cure under Rule 17(a) by obtaining the real party in interest's ratification). Where, as here, the action involves patent infringement, the Federal Circuit has recently addressed the distinction between constitutional standing—"the irreducible constitutional minimum of an injury in fact" requiring the party asserting infringement to show "exclusionary rights" to the patent—and statutory standing—requiring the party asserting infringement to show its "legal interest" in the patent satisfies "the 'patentee' requirement set out in 35 U.S.C. § 281. *See Intellectual Tech LLC v. Zebra Tech. Corp.* 101 F.4th 807, 814 (Fed. Cir. 2024). The Federal Circuit observed that prior case law "had improperly melded the injury-in-fact inquiry with the § 281 inquiry—often performing a combined analysis of the two simultaneously," but that the "distinction is critical." *Id.* "Article III standing is a jurisdictional requirement, which is incurable if absent at the initiation of suit." *Id. (*citation omitted). Statutory standing "on the other hand, is not jurisdictional and a defect is curable by joinder." *Id.* Plaintiff's attempt to distinguish *Intellectual Tech*'s holding, arguing that the Federal Circuit did not "mention[] the equitable remedies of Rule 17 and contract formation" (ECF No. 480 at 10), is not persuasive. The lack of Article III standing here "is incurable" because the Court found Plaintiff did not have exclusionary rights to the Patents-in-Suit at the inception of the lawsuit.

As to Plaintiff's second argument seeking contract reformation, the Court again agrees with Defendant that the Court cannot reform the 2006 Agreement for Sale when the Court dismissed Plaintiff's

claims for lack of constitutional standing. (ECF No. 479 at 10-1 (citing *N. Star Alaska v. United States*, 14 F.3d 36, 37-38 (9th Cir. 1994)).) Moreover, Plaintiff's argument is grounded on the assumption that the 2006 Agreement for Sale contains a mistake and should be reformed "to align the Agreement with the parties' true intent." (ECF No. 475 at 13-14.) But the Court found that the two agreements at issue—the 2002 Letter Agreement and the 2006 Agreement for Sale—"are unambiguous" and declined to consider Plaintiff's arguments as to Nelson and Sturgeon's intent. (ECF No. 471 at 8.)

Finally, as to Plaintiff's third argument explicitly seeking reconsideration of the Dismissal Order, Plaintiff in gist argues that the Court erred in finding that the 2006 Agreement for Sale transferred the "ASI Assets" (including the Patents-in-Suit) included in the 2002 Letter Agreement to Nelson. (ECF No. 476 at 16-22.) Here, Plaintiff acknowledges that "a motion for reconsideration is not an avenue to relitigate the same issues and arguments." (*Id.* at 16 (citing *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005)).) But Plaintiff then goes on to rehash arguments it raised in opposition to the motion to dismiss.[7] For example, Plaintiff argues the 2006

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[7] Plaintiff insists that the Court incorrectly shifted the burden of proof to Plaintiff in finding that it failed to meet its burden. (ECF No. 476 at 16-17.) But it is well established—as the Court stated in the Dismissal Order—that Plaintiff bears the burden of establishing its standing to bring the action. (ECF No. 471 at 3 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)) ("As with other jurisdictional requirements, "[t]he party invoking federal

Agreement for Sale did not convey a present assignment of the Patents-in-Suit. (ECF No. 476 at 18-19, 21-22.) Plaintiff previously asserted that argument in its opposition to the motion to dismiss. (ECF No. 306-2 at 22-26.) As another example, Plaintiff further discusses the effect of Section A of the 2002 Letter Agreement, arguing that Nelson could "modify" or "terminate" the provisions specifying the assets to be transferred. (ECF No. 476 at 20-21.) But again, Plaintiff advanced the same argument in opposition to dismissal. (ECF No. 306-2 at 25.) The Court accordingly declines Plaintiff's invitation to rethink its analysis. *See N.W. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9th Cir. 1988).

III. CONCLUSION

The Court notes that the parties cited several cases and made several arguments not discussed above. The Court did not address these cases and arguments because they do not materially affect the Court's resolution of the Motion.

It is therefore ordered Plaintiff's motion for reconsideration (ECF No. 476) is denied.

The Clerk of Court is further directed to reopen this case and vacate the final judgment (ECF No. 472) because Defendant's counterclaims have not been fully adjudicated.

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jurisdiction, [here AIT], bears the burden of establishing [the constitutional minimum of standing].").)

It is further ordered that the parties file a joint status report within 14 days as to the steps needed to bring Defendant's counterclaims to final resolution.

DATED THIS 21st Day of July 2025.

/s/ Miranda M. Du
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

APPENDIX D

NOTE: This order is nonprecedential.

United States Court of Appeals
for the Federal Circuit

APPLICATIONS IN INTERNET TIME, LLC,
Plaintiff-Appellant

v.

SALESFORCE, INC.,
Defendant-Appellee

2025-2026

Appeal from the United States District Court for the District of Nevada in No. 3:13-cv-00628-MMD-CLB, Judge Miranda M. Du.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

PER CURIAM.

O R D E R

Applications in Internet Time, LLC filed a combined petition for panel rehearing and rehearing en banc. A response to the petition was invited by the court and filed by Salesforce, Inc. The petition was referred to the panel that heard the appeal and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

June 12, 2026
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court

[1] Circuit Judge Newman did not participate.