



In regione caecorum rex est luscus
or... In the jury of the blind, Velvin Hogan is King
Intellectual Property Analysis of U.S. 7,352,953
August 30, 2012

'If this were my patent, could I defend it?' was the question jury foreman, Velvin Hogan asked himself when considering the Apple Samsung patent infringement suit. On August 24th, 2012 a nine person jury reached the verdict which awarded Apple slightly over \$1 billion in damages¹. This is a grievous miscarriage of justice in which Velvin played an active role. Velvin does not understand that novelty and obviousness are what determine patent validity. His public opining reinforces the widespread ignorance of the broken patent system and the myth of Apple's innovation.

For the record, prosecuting one patent does not entail knowledge or expertise in patent infringement cases. In fact, Velvin's self-query denotes an inherent misunderstanding of applying for a patent and patent prosecution. Despite this fact, Velvin led his fellow jurors and the public audience down a willfully (can anyone say treble damages?) ignorant path because of his experience in patent prosecution.

First, Velvin Hogan does NOT own a patent. Look up the only patent he prosecuted, US 7,352,953 (the '953 patent), on the USPTO website² and one will find that Velvin has not paid his maintenance fees. Yes, that's right. The guy who asked if he could defend Apple's ludicrous patent didn't think his own patent was worth a few hundred dollar maintenance fee because it was mostly copied from... uh oh, we're getting ahead of the story. Patently Obvious would encourage members of the press to perform due diligence in this respect.

In an interview with CNET, one of his fellow jurors Manuel Ilagan describes how Velvin "helped" the decision process by sharing his experience. "He owned patents himself...so he took us through his experience. After that it was easier. After we debated that first patent -- what was prior art --because we had a hard time believing there was no prior art. In fact we skipped that one," Ilagan continued, "so we could go on faster. It was bogging us down."³ Yes, skipping the prior art seems like a *great* idea in a patent infringement case.

Prior art limits the application of a patent's claims using records of the activities of others which clearly and convincingly show that a claim, as requested, must be more narrowly construed. Had the jury been encouraged to get "bogged down" in doing their job, they may have uncovered the key to understanding that Apple and Samsung patents copied previous innovation. Despite skipping that pesky prior art, Manuel pointed out, "We weren't impatient. We wanted to do the right thing, and not skip any evidence. I think we were thorough."

The definition of a double bind is "a psychological predicament in which a person receives from a single source conflicting messages that allow no appropriate response to be made."⁴ Patently Obvious is currently in Gregory Bateson's archetypal double bind along with every person who has read about the Apple Samsung verdict. To say that the jury did not skip any evidence and yet to have *skipped the prior art because it was slowing them down* is contradictory.

Another example of double bind: in an interview with Emily Chang from Bloomberg West⁵, Emily asserted Judge Lucy Koh's instructions that damages are not meant to punish companies, rather to compensate for losses. In a pre-

¹ http://www.huffingtonpost.com/2012/08/26/apple-jury-patent-trial-samsung_n_1831855.html?utm_hp_ref=technology

² <http://www.uspto.gov/>

³ http://news.cnet.com/8301-13579_3-57500358-37/exclusive-apple-samsung-juror-speaks-out/

⁴ <http://www.merriam-webster.com/dictionary/double+bind>

⁵ <http://www.bloomberg.com/video/jury-foreman-discusses-apple-samsung-trial-verdict-ikNjTofgRRecKM4cFXZoZA.html>

Bloomberg interview with Reuters⁶, Velvin said "We wanted to make sure the message we sent was not just a slap on the wrist. We wanted to make sure it was sufficiently high to be painful, but not unreasonable." When pressed on the retribution tone by Emily, Velvin argued it was not punishment since "in this country intellectual property deserves to be protected. My real point was that if anyone, the industry at large, if any company decides to ignore the stipulations and the rules and get too close that they cross the line and infringe and do it willfully; they need to understand, if they take the risk and get caught, they should have to pay for it."

And then Emily changed the subject. She likely understood Velvin really was punishing Samsung and demonstrating his massive ignorance of the problems with intellectual property (IP) in the United States. Velvin, to the uninitiated viewer, may have seemed painfully unaware of the widespread abuse and exploitation of the United States Patent and Trademark Office (USPTO).⁷

"We didn't want to give carte blanche to a company, by any name, to infringe someone else's intellectual property," was Velvin's assertion in the Reuters interview. Tragically, his failure to comply with his duty as a juror or foreman thereof gave carte blanche to Apple who, if successful, will use this verdict to permanently block importation of Samsung products. This is not protecting innovation. This is an anticompetitive consumer-choice-stifling measure.

Velvin was not asked to defend anyone's patent. He was asked to determine if Apple or Samsung were infringing on each other's intellectual property. As a result of his one night deliberation epiphany, he reinforced Apple's propaganda of true innovation and demonstrated why juries are ill-suited to decide infringement cases as long as the USPTO mints forgeries. Apple did not create their products in a vacuum. By telling others to ignore prior innovation, Velvin disrespected the fact that Apple was not the first to patent the designs.⁸

Analysis

But let's look more closely at Mr. Hogan's neighborhood. Everyone take out your sweaters and your slippers, whistle a little tune and let's see how naïve and immune from copying our Mr. Hogan actually is in reality. His abandoned '953 patent is for a method of storing and recording video on an electronic device. He invented the idea of putting video on a hard drive in 2001. This is equivalent to inventing the wheel in the industrial revolution. He originally filed in 2002 and the patent was finally issued in 2008. If he wouldn't pay to maintain his own "invention", why would he defend any one else's?

Document #	Title	Assignee Name	Priority	File	Issue
US 7,352,953	Method and apparatus for recording and storing video information	HOGAN VELVIN R	6-Mar-01	12-Feb-02	1-Apr-08

The '953 Patent: Before and After

During Velvin's patent prosecution process, ALL of his claims were REJECTED and, "required him to go back and defend—mostly with success, he says—each of his invention's multiple claims or the assertions behind a patent making it unique. He says that later helped him analyze the intellectual property that Apple and Samsung were asserting against each other in court."⁹ If by successful, he meant the patent had narrow claims with such little value as to not be worth maintaining, then yes he was successful.

⁶ <http://www.reuters.com/article/2012/08/25/us-apple-samsung-juror-idUSBRE87O09U20120825>

⁷ <http://www.infoworld.com/t/intellectual-property/apple-v-samsung-and-the-broken-patent-system-201166>

⁸ <http://www.npr.org/2012/07/30/157571532/samsung-fight-among-many-in-apples-patent-war>

⁹ <http://blogs.wsj.com/law/2012/08/27/apple-juror-had-first-hand-view-of-silicon-valley-litigation/>

Of note, Velvin’s invention was not under attack. He was registering his legal claims of invention with the United States government. Of his 27 original claims, only twelve were allowed after significant amendments to the remaining independent claim. These twelve claims were all rejected for being **obvious** and **non-novel**, which are the standards of criteria for patenting an invention in the United States^{10,11}. For those of you misty eyed sentimental types, let’s cut to the chase. Velvin Hogan claimed to invent something that belonged to someone else (See Appendix A). ***In other words... he copied someone else’s stuff – the same heinous crime he now finds reprehensible when done by the ogre Samsung harming the frolicking woodland nymph Apple.*** Had Velvin actually outed the fact that his patent experience was receiving a significantly narrowed patent after having the patent office reject his ENTIRE application as unpatentable, he may have been less “qualified” to be jury foreman and some modicum of justice may have had a chance of survival!

The amendments finally agreed to by the patent examiner, Thai Q. Tran, and assistant examiner, Nigar Chowdhury, to independent Claim One of the ‘953 patent are shown below.

Excerpts of rejected claims from Velvin Hogan’s U.S. 7,352,953	Excerpts of claims from Velvin Hogans’s negotiated claims ultimately allowed in U.S. 7,352,953
<p>1. A video system comprising:</p> <ul style="list-style-type: none"> a system controller module operative to receive and process one or more input signals to provide one or more video files; an internal fixed storage device operatively coupled to the system controller module, wherein the internal fixed storage device is configured to store the one or more video files from the system controller module; and an internal removable media storage device operatively coupled to the system controller module, wherein the internal removable media storage device is configured to store the one or more video files from the system controller module or the internal fixed storage device. 	<p>1. A video system comprising:</p> <ul style="list-style-type: none"> a system controller module, consisting of one tuner, wherein the tuner is configured to receive a process one or more input signals and provide one or more video signals, with at least one processor module coupled to the tuner, wherein the at least one processor module is configured to receive and process the one or more video signals from the tuner and to provide at least one output video signal, with a decoder coupled to the tuner, wherein the decoder is configured to receive and decode the one or more video signals from the tuner to provide at least one decoded video file, and a memory unit configured to store the at least one decoded video file, wherein the system controller module is operative to receive and process the one or more input signals to provide the one or more video files, wherein the system controller module provides a user-selectable option of editing one or more sections of the one or more video files, and wherein the system controller module does not include a separate program information receiver; an internal fixed storage device operatively coupled to the system controller module, wherein the internal fixed storage device is configured to store the one or more video files from the system controller module; and an internal removable media storage device operatively coupled to the system controller module, wherein the internal removable media storage device is configured to store the one or more video files from the system controller module or the internal fixed storage device.

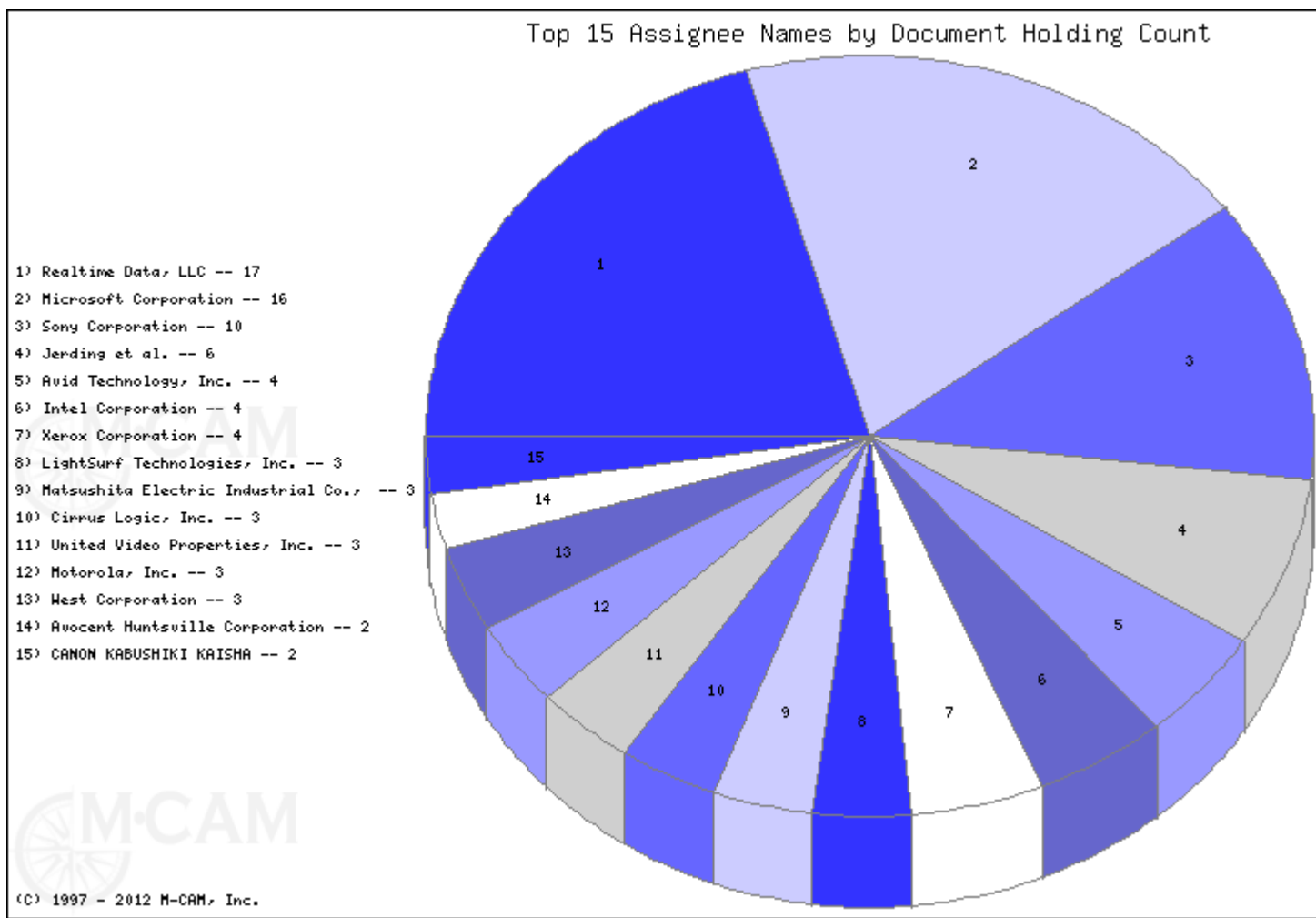
In total, Velvin filed seven Applicant Arguments in rebuttal to the patent examiners’ three-time rejection of his claims. As a result, he received a very detailed Claim One. This means that the ‘953 patent’s claims are so narrow that a judge would likely have a hard time determining infringement if Velvin had decided a company copied his “invention”. This claim likely provides a small level of protection. So small, mind you, that when the notice to pay maintenance fees came along, Velvin decided not to pay to keep his valuable patent experience artifact alive! By the way, if you’re reading the above claim amendment and apply Velvin’s “could I defend it?” standard, you’re doing well. Most people reviewing the nonsense spewed into this narrowed, allowable claim would be hard-pressed to even understand precisely what this amended invention ACTUALLY covers.

¹⁰ http://www.uspto.gov/web/offices/pac/mpep/documents/appxl_35_U_S_C_102.htm

¹¹ http://www.uspto.gov/web/offices/pac/mpep/documents/appxl_35_U_S_C_103.htm

Innovation Space

Patents are adverse rights, like 'No Trespassing' signs on conceptual property that has been reduced to practice by someone. If the '953 patent was a sign on a small tract of land then the chart below is a representation of the parties who have also laid claim on the same virtual tract as Velvin. The difference is these are patent holders who paid their maintenance fees and, consequently, have a theoretically enforceable right to the property. Mind you, that in the thicket below, the end result is probably fights like the Apple Samsung case, where both parties feel they have the legal right to sell a product.



The players in this space, like Microsoft, Sony, and Intel are unsurprising due to their businesses involving consumer products and electronic data management. The properties that they own are likely very similar to the '953 patent.

Goodbye Velvin

Samsung should carefully reconsider their legal representation selection criteria given the presence of a Velvin Hogan in the jury box. We find it fascinating that, the primary examiner of the '953 patent, Thai Q. Tran, also examined three Apple patents – something that, along with Velvin's bias, could have been known to counsel during jury selection. The same examiner that facilitated Velvin's patent award facilitated Apple's arsenal! Now we're confident that, in some distant future, competent, non-biased and not misguided people will adjudicate this case. Velvin's misguided advice to

keep the jury from being bogged down in the minutia of the law (to say nothing for his disregard of the jury instructions) impugns this verdict and besmirches the U.S. legal system.¹²

Unfortunately Velvin's view of the USPTO as a functioning government office will remain in the minds of those who watched and read his interviews. Velvin's own experience with his much heralded patent expertise was the recognition that he had copied the work of others. Yet he decides to hold Samsung to a standard, which he failed to hold for himself. Worse than that, he represented a competence to jurors that misled an entire judicial proceeding adding farcical injury to the already defiled blind justice. Hence our titular reference to the work of 15th century Desiderius Erasmus of Rotterdam. Erasmus gave the world the phrase, "In the land of the blind, the one eyed man is king". This was NOT meant as a compliment! This was an explicit recognition of the fallacy in presuming that someone stating competency and knowledge actually has what they represent.

For a more detailed examination of Velvin Hogan's patent mentioned in this report, please contact us at patentlyobvious@m-cam.com.

¹² <http://www.invertedalchemy.com/2012/08/winners-shall-be-losers.html>

Appendix A

Prior art to the '953 patent

Document #	Title	Assignee Name	Priority	File	Issue
US 6,335,768	Method and system for broadcasting digital audio and video to an analog wireless device	Motorola Inc.	4-May-98	4-May-98	1-Jan-02
US 6,309,424	Content independent data compression method and system	Realtime Data LLC	11-Dec-98	3-Nov-00	30-Oct-01
US 6,295,058	Method and apparatus for creating multimedia electronic mail messages or greeting cards on an interactive receiver	Sony Electronics Inc.	22-Jul-98	22-Jul-98	25-Sep-01
US 6,269,119	Sound-picture synchronous compression and synchronous reproduction system	NEC Corporation	12-Feb-97	9-Jun-00	31-Jul-01
US 6,240,460	Method and system for data transmission accordance with the form of the data transmission based on control information exchanged between applications of a data transmitter and a data receiver before data transmission is started	Fuji Xerox, Ltd.	2-Feb-96	29-Jan-97	29-May-01
US 6,195,024	Content independent data compression method and system	Realtime Data, LLC	11-Dec-98	11-Dec-98	27-Feb-01
US 6,157,625	Audio-video signal transmission apparatus	Sony Corporation	11-Dec-96	9-Dec-97	5-Dec-00
US 6,118,925	Method of and system for confirming program materials to be broadcasted and then broadcasting the program materials, and recording medium having recorded therein a procedure for implementing the method	Hitachi Denshi Kabushiki Kaisha	14-Nov-95	12-Nov-96	12-Sep-00
US 6,108,583	Adaptive data security system and method	Georgia Tech Research Corporation	28-Oct-98	28-Oct-98	22-Aug-00
US 6,104,756	Sound-picture synchronous compression and synchronous reproduction system	NEC Corporation	12-Feb-97	12-Feb-98	15-Aug-00
US 6,058,141	Varied frame rate video	Digital Bitcasting Corporation	28-Sep-96	28-Sep-96	2-May-00
US 6,041,142	Analyzer and methods for detecting and processing video data types in a video data stream	General Instrument Corporation	2-Dec-93	8-Apr-96	21-Mar-00
US 6,025,886	Scene-change-point detecting method and moving-picture editing/displaying method	Hitachi, Ltd.	20-Aug-96	20-Aug-97	15-Feb-00
US 5,850,218	Inter-active program guide with default selection control	Time Warner Entertainment Company L.P.	19-Feb-97	19-Feb-97	15-Dec-98
US 5,768,353	Data processing system for communications network	British Telecommunications public limited company	31-Mar-93	6-Mar-95	16-Jun-98
US 5,751,282	System and method for calling video on demand using an electronic programming guide	Microsoft Corporation	13-Jun-95	13-Jun-95	12-May-98
US 5,740,231	Network-based multimedia communications and directory system and method of operation	Octel Communications Corporation	16-Sep-94	16-Sep-94	14-Apr-98
US 5,732,216	Audio message exchange system	Internet Angles, Inc.	2-Oct-96	2-Oct-96	24-Mar-98
US 6,335,768	Method and system for broadcasting digital audio and video to an analog wireless device	Motorola Inc.	4-May-98	4-May-98	1-Jan-02
US 6,309,424	Content independent data compression method and system	Realtime Data LLC	11-Dec-98	3-Nov-00	30-Oct-01

M·CAM's Patent Glossary

<u>Aligned Sector:</u>	The business sector in which the product(s) resulting from the patent(s) is currently or intended to be sold.
<u>Applicant:</u>	The person or corporation that applies for a patent with the intent to use, manufacture or license the technology of the invention; under U.S. law, except in special situations, the applicant(s) must be the inventor(s).
<u>Application:</u>	Complete papers submitted to the U. S. Patent and Trademark Office seeking a patent including oath, specification, claims, and drawings. This usually does not signify a Provisional Patent Application, but only a regular patent application.
<u>Art:</u>	The established practice and public knowledge within a given field of technology. This also identifies a process or method used to produce a useful result. A term used in consideration of the problem of patentable novelty encompassing all that is known prior to the filing date of the application in the particular field of the invention.
<u>Assignee:</u>	The person(s) or corporate body to whom the law grants or vests a patent right. This refers to the person or corporate entity that is identified as the receiver of an assignment.
<u>Business Method</u>	
<u>Patent:</u>	A patent that controls the way a business process is undertaken. The issuance of these patents by the United States Patent and Trademark Office (USPTO) is new and controversial, since many allege that it is unfair to allow a patent on a way of doing business.
<u>Citation:</u>	This may include patents or journal articles that the applicant or examiner deems relevant to a current application. A reference to legal authorities or a prior art documentation are examples of a citation.
<u>Claim:</u>	The language in a patent application that defines the legal scope of the patent. Most patents have numerous claims. This is typically the single most important section in the application.
<u>Concurrent Art:</u>	Concurrent art occurs when related patent applications are being examined by the USPTO at the same time. It is difficult for any company or inventor to know, at the time they file for a patent, whether a "related" patent application exists.
<u>Filing Date:</u>	The date when a properly prepared application reaches the patent office in complete form.
<u>Innovation Cycle:</u>	A description of the commercialization timeframe for the intellectual property.
<u>Innovation Space:</u>	M·CAM's representation of the innovation(s) that occur before, during, and after the pending period of the subject patent. The innovation space is the first place to look for patents that are closely related to the subject patent and that may impact the defensibility of the subject patent or create opportunities for patent licensing.
<u>Issue Date:</u>	Not to be confused with the filing date, which is the date the patent application was physically received by the U.S. Patent and Trademark Office. This is the date on which the patent actually issues.
<u>Non-Aligned</u>	
<u>Sector:</u>	Any sector in which the patent can be used or sold, other than the sector for which the patent or resultant product was invented or intended.
<u>Pod:</u>	A group of patents owned by a company that should be treated as a single unit of innovation (e.g., a certain group of patents that comprise a single product or multiple related products).
<u>Prior Art:</u>	Any relevant patent that was issued before the patent being analyzed. If this previous patent was specifically mentioned in the new patent's application, the previous patent is referred to as "cited prior art". If it was NOT mentioned, then that previous patent is referred to as "uncited prior art".
<u>Subsequent Art:</u>	Any patent that has a filing date with the USPTO that is after the issuance date of the subject patent. This subsequent art patent may or may not have cited (see "Citation" above) the subject patent. As subsequent art represents more recent innovation than the subject patent, it has great potential to shrink the market opportunity for the subject patent.

A Brief Primer on the Patent System

In recent years, the importance of patents and intellectual property rights as an important variable in the marketplace has come to the forefront of the public consciousness as world leaders declare their country's lead in the innovation race. Damaging intellectual property litigation is becoming increasingly common across all industries. This is exacerbated when patent rights are granted for non-novel ideas. A vast amount of precedent innovation is unconsidered by patent-granting authorities in the creation of new IP rights. Patent granting authorities including the United States Patent and Trademark Office (USPTO), European Patent Office (EPO), Japanese Patent Office (JPO), Chinese State Intellectual Property Office (SIPO), Korean Intellectual Property Office (KIPO) and many others are constrained by the use of patent classification systems which are routinely circumvented by patent applicants.

There is a two-way social contract underlying the patent system. In the United States, patent terms are generally limited to 20 years from the date of application. By statutory intention, once a patent has expired, the patent holder loses the right to exclude others from fully utilizing any innovation described in the patent. A large number of patents enter the public domain when they are "abandoned" – when owners discontinue paying patent maintenance fees. Patents also only provide an exclusionary right in the country for which the patent is filed. As demonstrated by the Global Innovation Commons¹³ (G.I.C.), using intellectual property available in the public domain eliminates the need to pay licensing fees on those innovations in countries where the patent was never registered, or worldwide, if abandoned.

Patently Obvious® is a weekly report focusing on select groups of patents in order to increase transparency in markets, addressing information asymmetries, and providing a more level playing field for all parties.

The information in this report was prepared by M-CAM, Inc. ("M-CAM"). M-CAM has used reasonable efforts in collecting, preparing and providing quality information and material, but does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this report. Users of the information do so at their own risk and should independently corroborate said information prior to any use of it. M-CAM is not responsible for the results of any defects that may be found to exist in this material, or any lost profits or other consequential damages that may result from such defects. The information contained in this report is *not* to be construed as advice and should not be confused as any sort of advice. M-CAM does not undertake to advise the recipient or any other reader of this report of changes in its opinions or information. This information is provided "as is." M-CAM or its employees have or may have a long or short position or holding in the securities, options on securities, or other related investments of companies mentioned herein. This report is based on information available to the public.

¹³ <http://www.globalinnovationcommons.org/>