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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
SAN JOSE, CALIFORNIA

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

14 SILICON ECONOMICS, INC., a California
15 Corporation,

16 Plaintiff,

17 v.

18 FINANCIAL ACCOUNTING FOUNDATION,
19 and FINANCIAL ACCOUNTING STANDARDS
20 BOARD

21 Defendants.

CV 10-01939

CASE NO.

JW
HRL

COMPLAINT

- (1) Declaratory Relief (CCP 1060)
- (2) Monopolization (Sherman Act, § 1)
- (3) Monopolization (Sherman Act, § 2)
- (4) Unfair Competition (Cal. Bus. Prof. Code § 17200)

JURY TRIAL DEMANDED

22 Silicon Economics, Inc. ("SEI") for its complaint against the Financial Accounting
23 Foundation and the Financial Accounting Standards Board (together, the "Defendants") alleges
24 as follows:

25 I. NATURE OF CASE

26 1. SEI is a Silicon Valley-based technology company that has developed and
27 obtained United States patents on various accounting methods that significantly improve on
28 existing accounting practices. Through the advocacy efforts of SEI's founder, Joel Jameson
("Jameson"), SEI has been trying to encourage the adoption of these innovations by private
accounting firms, academic and financial institutions, governments and corporations. As part of

1 these efforts, SEI replied to an invitation for public comment from the Financial Accounting
2 Standards Board (“FASB”) in November 2006. SEI’s response included discussions regarding
3 one of SEI’s inventions called “EarningsPower Accounting”, which is now the subject of United
4 States Patent 7,620,573 (the “SEI Invention”). However, FASB now claims that it owns, or has
5 a royalty-free license, to the SEI Invention, including the U.S. Patent 7,620,573. This action
6 alleges that no contract ever existed in which Plaintiff assigned any invention or patent rights to
7 Defendants, and that Defendants violated federal antitrust laws and state unfair competition laws
8 in wrongfully appropriating the SEI Invention.

9 **II. PARTIES**

10 2. Joel Jameson (“Jameson”) is an individual residing at Los Altos, CA, and he is the
11 founder of SEI. Jameson is listed as the inventor of U.S. Patent 7,620,573 (the “SEI Patent”).

12 3. Silicon Economics, Inc. is a California corporation with principal offices located
13 at Los Altos, CA. It is also the assignee of the SEI Patent.

14 4. The Financial Accounting Foundation (“FAF”) is a private, non-governmental,
15 non-profit foundation within the meaning of Section 501(c)(3) of the Internal Revenue Code,
16 which is based in Stamford, CT.

17 5. The Financial Accounting Standards Board (“FASB”) is an unincorporated
18 private body that establishes and publishes financial accounting standards that are used in the
19 preparation of financial statements in the United States. It is based on Stamford, CT, and is
20 governed by the FAF.

21 **III. JURISDICTION AND VENUE**

22 6. This Court has jurisdiction over the subject matter of this action pursuant to 28
23 USC §§ 1331, 1338(a) and (b). Pursuant to 28 USC § 1367, this Court has supplemental
24 jurisdiction over Plaintiff’s state law claims because those claims are so related to its federal
25 claims that they form part of the same case or controversy and derive from a common set of
26 operative facts.

27 7. This Court has personal jurisdiction over Defendants and venue is proper in the
28 Northern District of California pursuant to 28 USC § 1391 (b) and (c), because a substantial part

1 of the events giving rise to these claims occurred in this judicial district.

2 **IV. INTRA-DISTRICT ASSIGNMENT**

3 8. The San Jose Division of the Northern District of California is the appropriate
4 division because a substantial part of the events giving rise to these claims occurred in Santa
5 Clara County, where Plaintiff's principal place of business is located.

6 **V. FACTUAL ALLEGATIONS**

7 **FASB and the Markets for Financial Accounting Methods and Standards**

8 9. Clear, accurate accounting standards are fundamental to a sound economy
9 because they govern financial disclosure and the preparation of financial statements – which, in
10 turn, constitute the tools for actors to make economic decisions. Accounting standards govern
11 what must be disclosed as part of financial statements, and how particular financial results must
12 be presented.

13 10. Since 1973, FASB has been the principal organization in the private sector for
14 establishing standards of financial accounting which govern the preparation of financial
15 statements by public companies in the United States. FASB's published standards are officially
16 recognized as authoritative by the United States Securities and Exchange Commission ("SEC"),
17 and the American Institute of Certified Public Accountants ("AICPA"). Although the SEC has
18 statutory authority to establish financial accounting and reporting standards for publicly held
19 companies under the Securities and Exchange Act of 1934, the SEC, instead, relies on FASB for
20 this function.

21 11. FASB has at least 90% of the market for establishing and decreeing financial
22 accounting standards in the United States (the "Relevant Market"). The remainder of the
23 Relevant Market is made up of individuals, academics, government bodies, corporations and
24 accounting firms that articulate accounting standards, either by adapting FASB's issued rules,
25 lobbying FASB directly, or lobbying the U.S. Congress, typically as a political coalition. The
26 Relevant Market also includes the International Accounting Standards Board (IASB) based in
27 London, U.K., which publishes a set of standards called the International Financial Reporting
28 Standards (IFRS). Both the FASB and the IASB have been moving towards merging and

1 forming a single global standards setter.

2 12. The power and influence of these other market participants is very limited
3 because FASB is the largest U.S. financial accounting standards setting organization and
4 because, almost, only its pronouncements are enforced by the SEC.

5 13. Unlike other industry standards-setting organizations, such as the Internet
6 Engineering Task Force (“IETF”), FASB’s standards-setting is far removed from industry
7 participants and accounting practitioners, resulting in low-quality standards that are often
8 divorced from reality. The lack of FASB’s innovation has given rise to discontent and the
9 attempt by other market participants to introduce competing financial accounting standards, and
10 even competing standards setting organizations:

11 A government-backed monopoly must at least appear to be
12 responsive to demands of various constituencies and thus adopt an
13 elaborate due process method that slows down standard-setting.
14 FASB has an elaborate due process model, and the appearance of
15 engaging diverse constituencies but little actual participation from
16 preparers, auditors and users of financial statements. We have lost
17 the notion of “generally accepted” in accounting. The level of
18 engagement of the engineering community in standard-setting that
19 we document in the voluntary participation in IETF standards and
20 groups, is inconceivable in accounting today.

21 Competing private standard setters have incentives to be
22 innovative and to carve out a clientele rather than trying to please
23 all constituencies (see Jamal, Maier and Sunder, [2003] for an
24 example in e-commerce privacy). Monopolies are seldom known
25 to be innovative. Especially when backed by government they are
26 slow in responding to changes in the environment due to extensive
27 due process requirements. The data on standard-setting in the
28 private sector suggests that FASB is too reticent, rather than too
29 prolific in setting standards. This lack of responsiveness and
30 timeliness is especially troubling in accounting where financial
31 engineering industry creates transactions and structures to evade
32 the substance of accounting standards.¹

33 14. It is precisely because of FASB's lack of innovation that other participants in the
34 Relevant Market, such as SEI, are trying to establish more effective accounting standards. Even
35 though FASB is larger and has the support of the SEC, SEI is a direct competitor to FASB
36 because SEI develops financial accounting standards that compete with those of FASB. As

37
38 ¹ Jamal and Sunder, Monopoly or Competition: Standard Setting in the Private Sector
(unpublished papers), available at <http://ssrn.com/abstract=1075705>.

1 discussed below, SEI's EarningsPower Accounting provides significantly more accurate
2 financial statements than FASB's Fair-Value Accounting.

3 The Fundamental Financial Accounting Problem.

4 15. For decades, financial accounting has been plagued by a fundamental problem: a
5 belief that either the balance sheet or the income statement can be accurate and useful, but not
6 both. Underpinning this belief is a confusion and inability to handle asset and liability value
7 trends and fluctuations, if not a failing even to identify the root cause of the fundamental
8 problem.

9 16. FASB's position is that the balance sheet is paramount and should be made
10 accurate and useful, with no mention of the adverse implications for the income statement. The
11 choice of the balance sheet over the income statement is known as Fair-Value Accounting
12 ("FVA").

13 17. The problem with FVA is that the net income measurement ceases to be a useful
14 measurement of future recurring earnings, i.e. earnings power. This is because the net income
15 measurement under FVA includes one-time windfall gains and losses. Thus, for instance, under
16 FVA, if the market value of a bank's loan decreases by \$10 million on Dec. 31, this loss is
17 reflected in net income for that period, even though it cannot reasonably be expected to recur.
18 Moreover, this approach fails to address the fact the loan has positive earnings power, which is
19 the basis for the loan having any value in the first place. In this example, FVA is portrayed
20 under FASB's ideal. In actual practice, some debt is handled under FVA, while other debt is
21 not.

22 18. Many have complained about FVA and the resulting volatility of net income
23 measurements. Just after the height of the recent economic crisis, the U.S. Congress pressured
24 FASB to curtail FVA. Many have cited FVA as a significant contributor to the current economic
25 crisis.²

26 ² See e.g. Lord Turner, head of the British Financial Services Authority, the chief British
27 financial regulator, with powers broader than the SEC: See *The Turner Review*, March 2009,
28 published by the British Financial Services Authority. Specifically, "mark-to-market accounting
helped fuel a self reinforcing cycle of irrational exuberance." (p. 53). Also:

1 SEI's Invention

2 19. The SEI Invention involves an equation derived from the present value equation
3 of finance and credit/debit posting procedures to calculate instantaneous end-of-period asset and
4 liability incomes and windfalls. These incomes, together with operating income, yield more
5 accurate recurring net income measurements, since asset and liability value trends are included,
6 while windfalls are excluded. In the case of the example of a bank's \$10 million loss on its loan
7 asset, there would be a windfall loss recorded in the current period, but not recorded as part of
8 net income; the positive recurring income for the loan asset, however, is determined and included
9 in net income. Accurate recurring net income measurement is foundational for the valuation of
10 shareholder equity and making equity-investment decisions.

11 20. Besides improving the accuracy of net income measurement, the SEI Invention
12 embraces mark-to-market accounting of asset and liability values, yielding accurate and current
13 balance sheets. By improving net income measurement accuracy and embracing mark-to-market
14 accounting, the SEI Invention resolves the fundamental problem and serves both sides in the
15 current debate regarding the objects and methods of financial accounting.

16 FASB's Wrongful Conduct

17 21. On July 6, 2006, FASB issued an invitation for public comment, No. 1260 – 001:
18 *Conceptual Framework For Financial Reporting: Objective Of Financial Reporting And*
19 *Qualitative Characteristics Of Decision Useful Financial Reporting Information* (the "Concept
20 Invitation", which is attached hereto as Exhibit A). The Concept Invitation presented FASB's
21

22 While it is difficult to quantify the effect, it is a reasonable judgement that the application
23 of fair value/mark-to-market accounting in trading books, played a significant role in
24 driving the unsustainable upswing in credit security values in the years running up to
2007, and has exacerbated the downswing. (p.65)

25 In his January 21, 2010 speech, Lord Turner, states:

26 Among bank prudential regulators and central banks there is a belief that existing bank
27 accounting standards were among the factors contributing to the crisis, inducing
28 procyclicality in credit provision and pricing.

Speech available at: www.fsa.gov.uk/Pages/Library/Communication/Speeches_____

1 thoughts concerning the most basic objects for financial reporting and how to accomplish such
2 objects.

3 22. The Concept Invitation requested comments by November 3, 2006, and requested
4 that “responses from interested parties be received by e-mail to director@fasb.org File reference
5 number 1260 -- 001.” The Concept Invitation also stated, in relevant part, that “all comments
6 received by the FASB are considered public information. Those comments will be posted to the
7 FASB's website and will be included in the project's public record.”

8 23. SEI provided comments to the Concept Invitation by e-mail within the requested
9 time. The comments included briefing on the SEI Invention. Following the submission of its
10 comments, SEI participated in a public FASB roundtable discussion concerning the Concept
11 Invitation. Privately, SEI's founder also met with the FASB regarding the SEI Invention.

12 24. In April, 2007, while surfing the FASB website, Jameson became aware of the
13 FASB website terms and conditions which provided, in relevant part, that FASB claimed rights
14 in any and all intellectual property sent to FASB by e-mail (the “FASB Website Terms”):

15 Any information or material you transmit to the Site by filling in
16 an on-line form, sending an e-mail (whether editorial or technical
17 in nature), or other activity, including information such as personal
18 data, comments and suggestions (whether in response to a specific
19 query or otherwise) will be treated as non-confidential and non-
20 proprietary except for information submitted in connection with a
21 purchase through the FASB store which is submitted pursuant to
22 the privacy policy displayed at the [FASB store](#). Unless we agree in
23 writing in advance, anything you transmit, whether electronically
24 or in hard copy may be used by the FAF/FASB and its affiliates for
25 any purpose, including, but not limited to, reproduction, disclosure,
26 transmission, publication, broadcast and posting. This means that
27 the FAF/FASB may use the ideas, concepts, know-how or
28 techniques you transmit to the Site. We advise that you do not send
us confidential or proprietary information unless that is your intent.
[emphasis added]

<http://web.archive.org/web/20021017070235/www.fasb.org/Terms&Conditions.shtml>

25 25. Jameson was not aware of the FASB Website Terms prior to April 2007. They
26 were not part of the Concept Invitation; nor were they referenced in any other dealings that
27 Jameson or SEI had with FASB. But out of an abundance of caution, Jameson contacted FASB
28 in order to obtain clarification and confirm that FASB did not claim any ownership interest (or

1 any other kind of interest) in the SEI Invention. FASB failed to reply to Jameson, even though
2 Jameson made it clear that he did not view the FASB Website Terms as applying to the SEI
3 Invention.

4 26. In the fall of 2009, Jameson, through legal counsel, again contacted FASB in an
5 effort to obtain final resolution of any dispute concerning FASB's alleged interest in the SEI
6 Invention. However, FASB claimed that it had a royalty-free ownership interest in the SEI
7 Invention (including the SEI Patent), and categorically refused to release any such interest.

8
9 **First Cause of Action**
(Declaratory Relief – Cal. Code of Civ. Proc. § 1060)

10 27. Plaintiff re-alleges the allegations set forth above as though set forth herein.

11 28. Defendants' only basis for claiming an interest in the SEI Invention arises out of
12 the FASB Website Terms.

13 29. The FASB Website Terms did not, and could not, create a contract between
14 FASB, Jameson or SEI because there was no notice of, or assent to, those terms by Jameson or
15 SEI.

16 30. FASB claims some right, title or interest in the SEI Invention, pursuant to the
17 FASB Website Terms, and this has caused an actual controversy with respect to ownership of the
18 SEI Invention .

19 31. This actual controversy has caused uncertainty concerning Plaintiff's exclusive
20 rights in the SEI Invention, which in turn present harm to the reputation and goodwill of SEI.

21 32. Plaintiff has no adequate and speedy remedy to resolve the parties' dispute other
22 than by declaratory judgment from this court. Because there is dispute with respect to a contract
23 that has caused immediate injury to Plaintiff, this action presents a real, substantial dispute
24 capable of specific relief.

25
26 **Second Cause of Action**
(Monopolization – Sherman Act, §2)

27 33. Plaintiff re-alleges the allegations set forth above as though set forth herein.
28

1 34. The relevant market in this action is the market for establishing accounting
2 standards in the United States.

3 35. There are other persons and bodies that consider or propose accounting standards,
4 such as governments, financial institutions, corporations, trade groups, and academics – but
5 FASB is the principal body sanctioned by the SEC for articulating and establishing accounting
6 standards for public companies in the United States. Because FASB largely governs and dictates
7 accounting standards, , it has market power in the Relevant Market.

8 36. In an effort to unlawfully maintain that market power, FASB has unlawfully
9 claimed a proprietary interest in the SEI Invention through a bad faith assertion of the FASB
10 Website Terms. The result of this unlawful conduct is to exclude the Plaintiff as a competitor in
11 the market for establishing accounting standards in the United States.

12 37. As a result of this exclusionary conduct, competition in the Relevant Market has
13 been lessened and Plaintiff has been harmed.

14 **Third Cause of Action**
15 **(Agreement in Restraint of Trade– Sherman Act, §1)**

16 38. Plaintiff re-alleges the allegations set forth above as though set forth herein.

17 39. If there was a valid contract made between SEI and FASB relating to the SEI
18 Invention (which is denied), then there was an “agreement” for the purpose of satisfying that
19 requirement under Sherman Act, § 1. This agreement has the purpose and effect of unduly
20 lessening competition in the Relevant Market because it discourages Plaintiff and others from
21 engaging in public comment. This, in turn, discourages innovation in the Relevant Market and
22 entrenches the monopoly of FASB.

23 40. SEI has, or will, suffer injury as proximate cause of the FASB’s unlawful
24 conduct, including the actual or future use and enforcement of the FASB Website Terms.

25 **Fourth Cause of Action**
26 **(Unfair Competition – Ca. Bus. Prof. Code § 17200)**

27 41. Plaintiff re-alleges the allegations set forth above as though set forth herein.

28 42. The acts complained of above constitute unfair business practices.

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all issues so triable.

DATED: May 5, 2010

Respectfully submitted,

NARANCIC & KATZMAN, P.C.

By /s/ Perry J. Narancic
Perry J. Narancic

Attorneys for Plaintiff
SILICON ECONOMICS, INC.