28 U.S.C. §1782; Application of *Intel* Factors. Reviewing Magistrate Judge Keyes' decision on the petitioner's 28 U.S.C. §1782 petition *de novo*, Judge Nelson applied the so-called *Intel* factors and found that a majority of those factors weighed against granting the petition. ***Andover Healthcare, Inc. v. 3M Co.,*** 2014 WL 4978476 (D. Minn. 10/06/2014).

Request for Attorney's Fees and Costs; Privilege Waived. Where the prevailing plaintiffs sought attorney's fees and costs, filed an affidavit and unredacted documents in support of that request under seal, and provided the defendant with only a redacted version of their billing records the defendant argued that it was entitled to review the unredacted billing records. Judge Nelson ordered the plaintiffs to submit the redacted version of their billing records and a privilege log to the court. The plaintiffs provided the court and the defendant with a partially redacted version of their billing records but failed to list the affidavit in their privilege log or offer any reason why the affidavit should remain under seal. Judge Nelson found that the plaintiffs had waived any privilege claims related to the affidavit and ordered the plaintiffs to file an unsealed copy of the affidavit. ***Heimerl v. Tech Elec. of Minnesota, Inc.***, 2014 WL 4988153 (D. Minn. 10/07/2014).

Expert Report Stricken; Permissible Opinions Intertwined with Impermissible Factual Conclusions. Judge Tunheim granted the plaintiff's motion to strike the defendants' expert report in a false arrest and excessive force case, finding that the report impermissibly "opine[d] on what factually occurred," included several inadmissible legal conclusions, and included medical opinions the expert was not qualified to offer. Judge Tunheim did allow the defendants 14 days to submit a modified version of the report that excluded the improper opinions. ***Thomas v. Barze***, 2014 WL 4954676 (D. Minn. 09/30/2014).

Motions to Transfer Venue Granted and Denied. Judge Frank denied the defendants' 28 U.S.C. §1404(a) motion to transfer an action to the District of New Jersey, rejecting their argument that the presence of a "non-exclusive" forum selection clause in two of four contracts between the parties could be the "sole basis" for the transfer, and finding that none of the usual Section 1404(a) factors weighed in favor of transfer. ***Pooniwala v. Wyndham Worldwide, Corp.***, 2014 WL 4659643 (D. Minn. 09/17/2014).

Judge Montgomery granted the defendant's motion to transfer the first-filed action to the Western District of Washington where a second-filed action was pending, finding that the plaintiff's choice of forum was not entitled to deference where it did not reside here, and that the first-filed rule did not apply because the plaintiff had engaged in forum shopping. ***Hartford Fire Ins. Co. v. Retail Mgmt. Solutions, LLC***, 2014 WL 4722366 (D. Minn. 09/22/2014).

Judge Kyle granted one defendant's motion to sever and transfer claims to the Southern District of Texas, relying primarily on the fact that claims against another defendant already had been transferred to that district and that discovery would be required in Louisiana and/or Texas in any event, and finding that those factors, among others, outweighed the deference that is usually afforded to a plaintiff's choice of forum. ***Valspar Corp. v. Kronos Worldwide, Inc.***, ___ F. Supp. 3d ___ (D. Minn. 2014).

Class Certification; Fed. R. Civ. P. 23(f); Stay Pending Appeal. Judge Frank granted defendants' expedited motion to stay proceedings pending the 8th Circuit's resolution of defendants' petition for leave to appeal, finding that there was a "good chance" that the 8th Circuit would grant the petition because of the large plaintiff class and the potential for "very significant" damages, the "evolving and novel issues of law," and the absence of any significant harm to the plaintiffs resulting from a stay. ***IBEW Local 98 Pension Fund v. Best Buy Co.***, 2014 WL 4540228 (D. Minn. 09/11/2014).

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IMMIGRATION LAW

ADMINISTRATIVE ACTION

Refugee Admissions Authorized. On September 30, 2014, the White House announced that President Obama authorized the admission that is justified by "humanitarian concerns or is otherwise in the national interest" of up to 70,000 refugees to the United States during Fiscal Year 2015. The breakdown in numbers is: Africa (17,000), East Asia (13,000), Europe and Central Asia (1,000), Latin America and the

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Caribbean (4,000), Near East and South Asia (33,000), and Unallocated Reserve (2,000). Certain eligible individuals may also be considered refugees within their own countries for admission to the United States: persons in Cuba, persons in Eurasia and the Baltics, persons in Iraq, persons in Honduras, Guatemala, and El Salvador, and persons identified as facing exceptional circumstances by any U.S. Embassy in any location. *http://www.whitehouse.gov/the-press-office/2014/09/30/presidential-memorandum-fy-2015-refugee-admissions*

Liberian Nationals: Deferred Enforced Departure Extended. On September 26, 2014, President Obama extended Deferred Enforced Departure for Liberians currently holding that status to September 30, 2016. According to the president, "I have determined that there are compelling foreign policy reasons to again extend DED to those Liberians presently residing in the United States under the existing grant of DED." *http://www.whitehouse.gov/the-press-office/2014/09/26/presidential-memorandum-deferred-enforced-departure-liberians*

Employment authorization for such Liberian nationals was automatically extended to March 30, 2015 with instructions how to apply for the full 24-month DED period appearing on October 1, 2014. 79 *Fed. Reg.* 59286-90 (10/01/2014). *http://www.gpo.gov/fdsys/pkg/FR-2014-10-01/pdf/2014-23507.pdf*

Department of Homeland Security (DHS) Enforcement. On September 23, 2014, the Department of Homeland Security released its annual report, *Immigration Enforcement Actions: 2013*. Enforcement actions include the "apprehension or arrest, detention, return, and removal from the United States of aliens" [sic] who entered the country without authorization, committed certain crimes, or failed to adhere to the terms and conditions of their stay. Key findings of the report include among others: DHS apprehensions of approximately 662,000 foreign nationals; detention of nearly 441,000 individuals; and removal of about 438,000 people from the United States. *http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf*

Asylum and Domestic Violence. On August 26, 2014, the Board of Immigration Appeals issued a decision in an asylum case involving "married women in Guatemala who are unable to leave their relationship." Women so situated may constitute a "cognizable particular social group," thereby forming the basis of a claim for asylum. ***Matter of A-R-C-G- et al.***, 26 I&N Dec. 388 (BIA 2014). *http://www.justice.gov/eoir/vll/intdec/vol26/3811.pdf*

H-2B Workers: Seafood Industry; Staggered Entry. On January 17, 2014, the Consolidated Appropriations Act of 2014, Pub. L. 113-76, was signed into law, allowing staggered entry of H-2B workers employed in the seafood industry. (H-2B workers are temporary workers who come to the United States to perform temporary nonagricultural services on a "one-time, seasonal, peak load, or intermittent basis"). The Department of Labor announced on October 7, 2014, that staggered entry of H-2B workers will expire on December 11, 2014 unless extended by legislative action. *http://www.foreignlaborcert.doleta.gov/*

JUDICIAL LAW

Immigration at the Supreme Court. Two important immigration cases are slated to be heard by the United States Supreme Court this term. The first, *Mellouli v. Holder*, is an 8th Circuit case that poses the question of whether a noncitizen may be deported if convicted for "possession of drug paraphernalia" under a Kansas statute that makes no reference to a controlled substance. This is significant in that one may be deported under 8 U.S.C. §1227(a)(2)(B)(i) if convicted for violating "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance." ***Mellouli v. Holder***, No. 13-1034, *cert granted* 06/30/2014. *http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-1034.htm*

The second case, *Kerry v. Din*, is a 9th Circuit case involving whether a U.S. State Department consular officer's denial of an immigrant visa to the foreign national spouse of a U.S. citizen may be subject to judicial review. This is significant in that the U.S. State Department has historically been shielded from judicial scrutiny under the "doctrine of consular nonreviewability." ***Kerry v. Din***, No. 13-1402, *cert granted* 10/02/2014. *http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-1402.htm*

Basis for Withholding Removal: Childhood Abuse; Independent Adult. The 8th Circuit Court of Appeals found that childhood abuse suffered by petitioner who is now an adult provides no basis for a grant of withholding of removal. "Hui's age was a fundamental change in circumstances such that her life or freedom would not be threatened if she returned to Hong Kong." ***Hui v. Holder***, No. 13-3733, *slip op.* (8th Cir. 10/14/2014). *http://media.ca8.uscourts.gov/opndir/14/10/133733P.pdf*

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INTELLECTUAL PROPERTY

JUDICIAL LAW

Patent Infringement: Royalty Calculation; Damages Analysis. The Federal Circuit recently vacated a $368 million damages award against Apple due to flawed analysis by Plaintiff VirnetX's damages expert. At trial the jury determined that Apple products containing FaceTime and VPN On Demand software infringed several of VirnetX's patents. VirnetX's expert then presented three reasonable royalty theories which the district court admitted over Apple's *Daubert* challenges. The first theory used the "smallest saleable unit" approach to determine an appropriate royalty base, and then applied a one percent royalty rate calculated from six other VirnetX licensing agreements. The other two theories depended on the Nash Bargaining Solution, a mathematical theorem which posits that parties to a two-person negotiation will reach a "solution" where both parties receive the same profit. These theories both invoked the Nash theorem to suggest a starting 50/50 profit split, which VirnetX's expert then adjusted to 55/45 in favor of Apple due to VirnetX's weaker bargaining position.

On appeal the Federal Circuit held that the expert's testimony on each theory was flawed and should have been excluded. Considering the first theory,

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