TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM381582

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	COURT ORDER

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Priva Technologies, Inc.		01/11/2016	Corporation: DELAWARE

RECEIVING PARTY DATA

Name:	Pro Marketing Sales, Inc.
Street Address:	1350 Bluegrass Lakes Parkway
City:	Alpharetta
State/Country:	GEORGIA
Postal Code:	30004
Entity Type:	Corporation: GEORGIA

PROPERTY NUMBERS Total: 10

Property Type	Number	Word Mark
Registration Number:	4056667	CLEARED
Registration Number:	3944801	CLEAREDSCREEN
Registration Number:	2826020	CLEARED A PRIVA TECHNOLOGIES SOLUTION
Registration Number:	2815577	CLEARED
Registration Number:	2826021	CLEARED
Serial Number:	77411621	CLEARED FOR TAKEOFF
Serial Number:	77590665	CARGOCHECK
Serial Number:	77590669	CARGOSCREEN
Serial Number:	77940298	CLEARED FOR TAKEOFF
Serial Number:	78208450	POSNET

OP $265.00 4056667

CORRESPONDENCE DATA

Fax Number: 5059035834

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 505-670-2160
Email: bkane@kaneplc.com
Correspondent Name: Barry C. Kane
Address Line 1: 451 Camino del Monte Sol
Address Line 4: Santa Fe, NEW MEXICO 87505

ATTORNEY DOCKET NUMBER:	6022.004
NAME OF SUBMITTER:	Barry C. Kane
SIGNATURE:	/Barry C. Kane/
DATE SIGNED:	04/22/2016

Total Attachments: 53
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CYBER SOLUTIONS INTERNATIONAL, LLC.,
a South Carolina Limited Liability Company,

Plaintiff,

v.

PRIVA SECURITY CORPORATION,
PRIVA TECHNOLOGIES, INC, both
Delaware corporations; **PRO MARKETING**
SALES, INC., a Florida corporation

Defendants.

Case No. 1:13-cv-202
Hon. Robert Holmes Bell
U.S. District Judge

Exhibit 1

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made as of April 15, 2009, by and among Priva Technologies, Inc., a Delaware corporation, with its principal office at 875 N. Michigan Ave., Suite 1404, Chicago, Illinois, 60611 ("Priva" or the "Company"), and the Secured Parties identified as such on the signature page(s) below (the "Secured Parties").

WHEREAS, pursuant to that certain Note Purchase and Restricted Stock Issuance Agreement dated as of April 15, 2009 (the "Purchase Agreement") by and among the Company and the Secured Parties, the Secured Parties purchased from the Company Secured Convertible Promissory Notes in the aggregate principal amount of up to $5,000,000 (each, a "Note" and collectively, the "Notes") and the Company and the Secured Parties agreed that the Secured Parties would become first priority secured creditors of the Company; and

WHEREAS, the Purchase Agreement is conditioned on, among other things, the execution and delivery by the Company of a Security Agreement in the form hereof.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein that are defined in the UCC (as hereafter defined) shall have the meanings set forth therein. In addition to any other terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

"Assigned Agreements" shall mean all material contracts and agreements to which the Company or any of its subsidiaries is a party, as the same may be amended, restated, supplemented or otherwise modified from time to time, including without limitation (i) all rights of the Company to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of the Company to receive proceeds of any insurance, indemnity, warranty or guaranty thereunder or in connection therewith, (iii) all rights of the Company to damages arising thereunder or in connection therewith and (iv) all rights of the Company to perform thereunder and to compel performance and otherwise exercise rights and remedies thereunder.

"Collateral" shall mean, other than with respect to Priva Financial Services, Inc., a wholly-owned subsidiary of the Company, all types or items of personal property owned by the Company, whether now owned or hereafter arising or acquired, and wherever located, or in which the Company now has or at any time in the future may acquire any right, title or interest, including, without limitation, all of the following property (in each case as defined under the UCC or in this Agreement): (i) all Accounts; (ii) all Assigned Agreements; (iii) all Chattel Paper; (iv) all Documents; (v) all Instruments; (vi) all Inventory; (vii) all Equipment; (viii) all General Intangibles; (ix) all Goods; (x) all Deposit Accounts; (xi) all Investment Property; (xii) all Securities Accounts; (xiii) all money; (xiv) all Receivables and Receivable Records; (xv) all Intellectual Property; (xvi) all Commercial Tort Claims; (xvii) all Supporting Obligations; and (xviii) to the extent not otherwise included, all products and Proceeds of any and all of the foregoing property described above.

"Copyright Licenses" shall mean all agreements providing for the granting of any right in or to any Copyright (whether the Company is licensee or licensor thereunder) and the granting of any right in any derivative work based upon any Copyright, together with (i) all renewals, extensions and continuations of and supplements to any of the foregoing, (ii) all proceeds of any of the foregoing, including without limitation all income, fees, royalties, damages, claims, payments and proceeds of suit now or hereafter due and/or payable arising out of or in connection with any of the foregoing, (iii) all rights to sue for past, present and future infringements or violations of any of the foregoing, and (iv) any other rights or privileges to use or practice any Copyright or arising under, or corresponding or relating to, any of the foregoing.

"Copyrights" shall mean all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, including without limitation all mask works fixed in semi-conductor chip products (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, published or unpublished, now or hereafter in effect, and all registrations and recordings thereof and all applications therefor or in connection therewith, together with (i) all rights and privileges relating or corresponding to any of the foregoing, (ii) all extensions, renewals and continuations of any of the foregoing, (iii) all rights to sue for past, present and future infringements or violations of any of the foregoing, and (iv) all proceeds of any of the foregoing, including, without limitation, all licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising from, out of or in connection with any of the foregoing.

"Equipment" shall mean: (i) all "equipment" as defined in the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

"Event of Default" shall mean any (a) Event of Default (as defined in any Note), or (b) any breach by the Company of or any default by the Company under any representation or warranty, covenant, agreement or term under this Agreement or the Purchase Agreement.

"Goods" shall mean all "goods" as defined in Article 9 of the UCC and shall include, without limitation, all Inventory and Equipment and any computer program embedded in the goods and any supporting information provided in connection with such program if (x) the program is associated with the goods in such a manner that is customarily considered part of the goods or (y) by becoming the owner of the goods, a Person acquires a right to use the program in connection with the goods (in each case, regardless of whether characterized as goods under the UCC).

"Goodwill" shall mean the entire goodwill connected with the Company's business and, in any event, shall include, without limitation, (i) all goodwill connected with the use of and symbolized by any Intellectual Property in which the Company has any interest, (ii) all know-how, trade secrets, customer lists, proprietary information, inventions, methods, procedures, algorithms, source code, computer programs, formulae, descriptions, name plates, catalogues, confidential information, consulting agreements, engineering contracts and such other assets that relate to such goodwill or Intellectual Property and (iii) all product lines of the Company's business.

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including without limitation the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses, and all Goodwill associated with or arising in connection with any of the foregoing.

"Patent Licenses" shall mean all agreements providing for the granting of any right in or to Patents (whether the Company hereunder is licensee or licensor thereunder), together with (i) all rights and privileges arising under, or relating or corresponding to, any of the foregoing, (ii) all extensions, renewals and continuations of and supplements to any of the foregoing, (iii) all rights to sue for past, present and future infringements or violations of any of the foregoing, and (iv) all proceeds of any of the foregoing, including, without limitation, all licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising under, out of or in connection with any of the foregoing.

"Patents" shall mean all patents (including without limitation all utility patents, design patents, industrial designs and utility model registrations) of the United States or any other country or political subdivision thereof, and all applications for any letters patent, together with (i) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations of any of the foregoing, (ii) all rights and privileges corresponding or relating to any of the foregoing, (iii) all proceeds of any of the foregoing including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit arising from, out of or in connection with any of the foregoing, and (iv) all rights to sue for past, present and future infringements or violations of any of the foregoing.

"Proceeds" shall mean all proceeds (as defined in the UCC) and any and all amounts or items of property received when any Collateral or proceeds thereof are sold, exchanged, licensed, transferred or otherwise disposed of, both cash and non-cash, including proceeds of insurance or indemnity paid or payable on or in connection with any Collateral.

"Receivables" shall mean all rights of the Company to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation, all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all of the Company's rights, if any, in any goods or other property giving rise to such right to payment and all Supporting Obligations related thereto and all Receivables Records.

"Receivables Records" shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of the Company or any computer bureau or agent from time to time acting for the Company or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

"Secured Obligations" shall mean, collectively, (i) the unpaid principal of and interest on the loans evidenced by each Note and all other liabilities, obligations and indebtedness (whether actual or contingent, whether owed jointly or severally and whether for principal, interest, fees, expenses, indemnities or otherwise) of the Company to the Secured Parties, now existing or hereafter incurred, which may arise under, out of or in connection with each Note, this Agreement, the Purchase Agreement or any other agreements, instruments and documents made, delivered or given in connection with any of the foregoing (collectively, and as any of the same may be amended, modified or supplemented from time to time, the "Loan Documents"), together with any and all extensions renewals, refinancings or refunding thereof in whole or in part, (ii) all costs and expenses (including, without limitation, to the extent permitted by law, reasonable attorney's fees and other legal expenses) incurred by the Secured Parties in the enforcement and collection of any of the liabilities, obligations and indebtedness referred to in clause (i) above, and (iii) all payments and advances made by any of the Secured Parties for the maintenance, preservation, protection or enforcement of, or realization upon, any Collateral or pursuant to any other agreement, instrument or note relating to any of the Secured Obligations (including, without limitation, advances for taxes, insurance, storage, transportation, repairs and the like), or otherwise. Without limiting the generality of the foregoing, the Secured Obligations shall include all amounts that constitute part of the Secured Obligations and would be owed by the Company to the Secured Parties, or any of them, under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company.

"Secured Parties" shall mean, collectively, the Secured Parties and each of their permitted successors and assigns.

"Security Documents" means additional agreements entered into by the Company and the Secured Parties to provide the Secured Parties with additional security for the Secured Obligations or to perfect security interests granted the Secured Parties pursuant to this Agreement.

"Trademark Licenses" shall mean any and all agreements providing for the granting of any right in or to any Trademark (whether the Company is licensee or licensor thereunder), together with (i) all extensions, renewals and continuations of and supplements to any of the foregoing, (ii) all rights and privileges arising under, or corresponding or relating to, any of the foregoing, (iii) all proceeds of any of the foregoing, including without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising under, out of or in connection with any of the foregoing, and (iv) all rights to sue for past, present and future infringements or violations of any of the foregoing.

"Trademarks" shall mean all United States, state and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, internet domain names, trade styles, service marks, certification marks, collective marks, symbols, devices, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing, together with (i) all reissues, extensions, continuations and renewals of any of the foregoing, (ii) all rights and privileges relating to any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by any of the foregoing, (iv) all proceeds of any of the foregoing including, without limitation, all licenses, royalties, income, payments, claims, damages, and proceeds of suit now and/or hereafter due and payable arising from, out of or in connection with any of the foregoing, and (v) all rights to sue for (x) past, present and future infringements, violations or dilution of any of the foregoing and (y) any injury to goodwill of any of the foregoing.

"Trade Secret Licenses" shall mean any and all payments providing for the granting of any right in or to any Trade Secret (whether the Company is licensee or licensor thereunder), together with (i) all extensions, renewals and continuations of and supplements to any of the foregoing, (ii) all rights and privileges arising under, or corresponding or relating to, any of the foregoing, (iii) all proceeds of any of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising from, out of or in connection with any of the foregoing, and (iv) all rights to sue for past, present and future infringements or violations of any of the foregoing.

"Trade Secrets" shall mean all trade secrets and all other confidential or proprietary information and know-how now or hereafter owned or used in, or contemplated at any time for use in, the business of the Company (all of the foregoing being collectively called a "Trade Secret"), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, together with (i) all extensions, renewals and continuations of any of the foregoing, (ii) all rights and privileges corresponding or relating to any of the foregoing, (iii) all proceeds of any of the foregoing, including without limitation, all licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising under, out of or in connection with any of the foregoing, and (iv) all rights to sue for past, present and future infringements or violations of any of the foregoing.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Illinois.

2. Grant of the Security Interest. The Company hereby grants to and creates in favor of the Secured Parties a first priority continuing security interest and lien in all of its right, title and interest in and to all of the Collateral as security for the full and timely payment, observance and performance when due (whether at the stated maturity, by required prepayment, by acceleration or otherwise), of the Secured Obligations in accordance with the terms thereof.

3. Company's Continuing Obligations. Notwithstanding any provision hereof to the contrary, (i) the Company shall remain liable under all contracts and agreements relating to the Collateral and shall pay, perform and observe all of its liabilities and obligations related thereto, (ii) no Secured Party shall have any obligation to pay, perform or observe any of such liabilities or obligations under as a result of exercising its rights under this Agreement or otherwise and (iii) the exercise of rights or remedies by any Secured Party under this Agreement or otherwise shall not release the Company from any of such liabilities or obligations.

4. Filing Requirements; Other Financing Statements.

(a) The Company hereby authorizes each Secured Party to file one or more financing or continuation statements, and amendments thereto, describing all or any part of the Collateral, in each case without the signature of the Company. The Company agrees that a carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement and may be filed as a financing statement by any Secured Party in any and all jurisdictions. The Company shall furnish to each Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as such Secured Party may reasonably request, all in reasonable detail. The Company shall promptly notify each Secured Party upon the filing of any patent application and of the assignment of a filing number to any patent application filed before or after the date hereof.

(b) The Company hereby authorizes each Secured Party to file a record or records (as defined in Article 9 of the UCC), including, without limitation, financing statements, in all jurisdictions and with all filing offices as any such Secured Party may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to such Secured Party herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as such Secured Party may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to such Secured Party herein, including, without limitation, describing such property as "all assets" or "all personal property."

5. Maintenance and Operation of Tangible Property. The Company shall maintain all Collateral in saleable condition in all material respects.

6. Insurance; Risk of Loss. The risk of loss of, damage to or destruction of the Collateral shall be on the Company. The Company shall maintain, at its expense, insurance with respect to the Collateral against such risks and casualties, in such amounts, and with such insurers, as are in each case satisfactory to the Secured Parties from time to time. Each policy of liability insurance shall provide for all losses to be paid on behalf of the Secured Parties and the Company as their respective interests may appear and each policy of property damage insurance shall provide for all losses to be paid to the Company. Each such policy shall in addition (i) name each Secured Party as an additional insured thereunder, (ii) provide that at least 30 days' prior written notice of cancellation or of lapse shall be given to each Secured Party by the insurer and (iii) contain such other terms and provisions as may be reasonably acceptable to the Secured Parties from time to time. The Company shall deliver to each Secured Party all original insurance policies, or certificates copies thereof, and evidence of payment of all premiums with respect thereto. If the Company fails to obtain and keep in full force and effect the insurance coverage required hereunder or fails to pay the premiums therefor when due, any Secured Party may (but shall not be obligated to) do so for the account of the Company (without waiving or releasing any obligation or default of the Company hereunder) and add the cost thereof to the Secured Obligations.

7. Rights in Collateral.

(a) The Company represents, warrants and covenants to each Secured Party that it has and shall have at all times good and marketable title to all Collateral, free and clear of all liens, security interests, claims, charges and encumbrances (other than the security interest granted to each Secured Party pursuant to the Agreement), and the Company shall defend such title against the claims and demands of all other persons. The Company represents and warrants to each Secured Party that this Agreement creates a valid security interest in the Collateral which, upon the filing of financing statements in the jurisdictions specified in Section 4 hereof, shall constitute a valid first priority perfected lien on and security interest in the Collateral.

(b) The Company shall not sell, transfer, assign, convey or otherwise dispose of, or extend, amend, terminate or otherwise modify any term or provision of any license of the Company's Intellectual Property, other than in the ordinary course of business, or other agreement relating to, any Collateral, any interest therein or any Proceeds thereof, nor waive or release any right with respect thereto, without the prior written consent of the Secured Parties; provided, the Company may sell or otherwise dispose of items of Collateral which, individually, do not exceed $50,000 in value.

(c) The Company assumes full responsibility for taking any and all steps to preserve its rights and the rights of each Secured Party with respect to the Collateral against all prior parties. The powers conferred on the Secured Parties hereunder are solely to protect their interest in the Collateral and shall not impose any duty upon them to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, no Secured Party shall have any duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Each Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which such Secured Party accords its own property. None of the Secured Parties nor any of their respective directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Company or otherwise. If Company fails to perform any agreement contained herein, any Secured Party may itself perform, or cause performance of, such agreement, and the expenses of such Secured Party incurred in connection therewith shall be promptly paid in full Company.

(d) If the Company shall at any time hold or acquire a Commercial Tort Claim, then the Company shall immediately notify each Secured Party in a writing signed by the Company of the details thereof and grant to each Secured Party of which all or any part of its respective Secured Obligations remain outstanding a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Parties.

(e) The Company (either itself or through licensees) will not do any act, or omit to do any act, whereby any Patent may become forfeited, abandoned or dedicated to the public.

(f) The Company (either itself or through licensees) (i) will use, maintain and employ (to the extent applicable) all Intellectual Property and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or omit to do any act whereby any portion of any Intellectual Property may become forfeited, abandoned, dedicated to the public, invalidated or otherwise impaired. The Company will not (either itself or through licensees) do any act whereby any portion of the Intellectual Property may fall into the public domain.

(g) The Company will notify the Secured Parties immediately if it knows, or has reason to know, that any application or registration relating to any Intellectual Property may become forfeited, abandoned, invalidated or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any other governmental authority in any country) regarding the Company's ownership of, or the validity of, any Intellectual Property or the Company's right to register the same or to own and maintain the same.

(h) The Company will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(i) In the event that any Intellectual Property is infringed, misappropriated or diluted by a third party, the Company shall (A) take such actions as the Company shall reasonably deem appropriate under the circumstances to protect such Intellectual Property, and (B) promptly notify each Secured Party after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

8. Records. The Company shall at all times maintain accurate and complete records with respect to each item and version of the Collateral (including, without limitation, a record of all Proceeds) and shall furnish copies of such records to any Secured Party with reasonable promptness from time to time upon such Secured Party's request.

9. Taxes and Charges. The Company shall promptly pay and discharge all taxes, levies and other impositions levied on any Collateral, except only to the extent that such taxes, levies and other impositions shall not then be due or shall be contested in good faith by appropriate proceedings diligently conducted (provided that such reserves and other provisions as may be required by generally accepted accounting principles have been duly made and recorded). If the Company shall fail to do so, any Secured Party may (but shall not be obligated to) pay such taxes, levies or impositions for the account of the Company (without waiving or releasing any obligation or default by the Company hereunder) and may add the amount thereof to the Secured Obligations.

10. Inspection. Each Secured Party and its respective officers, employees and agents shall have the right at all reasonable times to inspect the Collateral and to examine and make extracts from any books and records of the Company pertaining to the Collateral owned by it or in its possession. The Secured Parties may at any time, without notice to the Company, verify with any account debtor of the Company the status of any account payable by such account debtor. The Company from time to time shall execute and deliver such instruments and take all such action as any Secured Party may reasonably request in order to effectuate the provisions of this Section 10. The Company will promptly notify each Secured Party of any material claim made or asserted against the Collateral by any person or entity and of any event which could materially adversely affect the value of the Collateral or such Secured Party's interests therein.

11. Preservation and Protection of Security Interest. The Company shall diligently preserve and protect each Secured Party's first priority security interest in the Collateral and shall, at its expense, as and when requested by any Secured Party, cause such security interest in the Collateral to be perfected and continue to be perfected so long as the Secured Obligations or any portion thereof are outstanding and unpaid, and for such purposes, the Company shall from time to time at any Secured Party's request and at its expense file or record, or cause to be filed or recorded, such instruments, documents and notices (including, without limitation, financing statements and continuation statements) as such Secured Party may deem necessary or advisable from time to time in order to perfect and continue perfected such security interests. The Company shall do all such other acts and things and shall execute and deliver all such other instruments and documents (including, without limitation, further security agreements, pledges, endorsements, assignments and notices) as such Secured Party may deem necessary or advisable from time to time in order to perfect and preserve the priority of such Secured Party's security interest in the Collateral, as a perfected security interest in the Collateral, prior to the rights of any other secured party or lien creditor. Each Secured Party, and each of their respective officers, employees and authorized agents, or any of them, are hereby irrevocably appointed the attorneys-in-fact of the Company to do, at the Company's expense, all acts and things which such Secured Party may deem necessary or advisable to preserve, perfect and continue perfected such Secured Party's security interest in the Collateral (including, without limitation, the signing of financing, continuation or other similar statements and notices on behalf of the Company), which appointment is irrevocable and coupled with an interest.

12. Remedies on Default.

(a) If any one or more Events of Default shall occur and be continuing, any Secured Party may (i) take possession and control of all or any part of the Collateral and Proceeds thereof and the books and records pertaining thereto, with or without judicial process, and (ii) without demand or notice (and if notice is required by law, after 10 days prior written notice to the Company), proceed to exercise one or more of the rights and remedies accorded to a secured party under the UCC or otherwise provided by law or this Agreement. Each Secured Party's rights and remedies shall include without limitation the power to (i) sell, license, assign or otherwise transfer all or any portion of the Collateral at public or private sale at such place and time and on such terms as such Secured Party may see fit, (ii) execute in the name of the Company any agreement and/or instrument representing or relating to the Collateral, (iii) perform any agreement or contract which relates to the Collateral and (iv) sell, assign, license, sublicense or otherwise dispose of, all right, title and interest in and to the Collateral (including, without limitation, assignments, recordings, registrations and applications therefor in the United States Patent and Trademark Office, the United States Copyright Office or any similar domestic or foreign office or agency) and for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to, the foregoing, execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose. Without precluding any other methods of sale, the sale of Collateral shall be deemed to have been made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of secured lenders disposing of similar property and, subject to (i) above, any Secured Party may sell the Collateral on such terms as such Secured Party may choose without assuming any credit risk and without any obligation to advertise or give notice of any kind not expressly required under this Agreement, by the UCC or otherwise. Any Secured Party shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of such Secured Party, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption the Company hereby releases to the extent not prohibited by the UCC. All of the rights and remedies of each Secured Party under this Agreement shall be cumulative and not exclusive of other rights and remedies which it otherwise would have, whether under the UCC or otherwise. After the occurrence and during the continuance of an Event of Default, promptly upon the request of any Secured Party, the Company shall assemble so much of the Collateral (including all books and records relating thereto) in its possession as is capable of physical delivery and make the same available to such Secured Party at such locations designated by such Secured Party reasonably convenient to both parties and shall permit such Secured Party, or such Secured Party's representatives and agents, to enter any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral and to remove all or any part of the Collateral. The right of any Secured Party to have the Collateral assembled and made available to it is of the essence of this Agreement, and each Secured Party may, at its election, enforce such right by a bill in equity for injunctive relief for specific performance. None of the Secured Parties shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of all or any of the Secured Obligations.

(b) If an Event of Default shall occur and be continuing, in addition to all other rights and remedies available to it hereunder or otherwise, each Secured Party shall have the right, without notice to the Company, to set-off against and to appropriate and apply to the unpaid balance of the Note issued to it and all other Secured Obligations, any obligations owing to the Company by such Secured Party and any funds held in any manner for the account of the Company by such Secured Party, and such Secured Party is hereby granted a security interest in and lien on all such obligations and funds for such purpose. Such set-off rights shall exist whether or not any Secured Party shall have made any demand under the Notes or other Secured Obligations and whether or not any such Note or such other obligations are matured or unmatured.

13. Application of Proceeds. Any Collateral or Proceeds of the Collateral held, received or realized upon at any time by any Secured Party (except, when no Event of Default has occurred and is continuing, such moneys payable to the Company under insurance policies that the Company may use to repair or replace Collateral) shall be applied, as follows:

(a) First, to reimburse the Secured Parties for all of their respective expenses and fees incurred for which the Company is obligated to pay the Secured Parties under and in accordance with the Note issued to such Secured Parties and this Agreement (including, without limitation, reasonable attorneys' fees and other legal expenses);

(b) Second, the satisfaction of all other Secured Obligations;

(c) Third, the balance, if any, to the Company or as otherwise required by law. If the Proceeds of the Collateral together with the proceeds of any other collateral granted to each Secured Party by the Company to secure the Secured Obligations, and of any sales or other dispositions thereof, shall be insufficient to fully discharge and satisfy the Secured Obligations, the Company shall be liable for the deficiency, and if a surplus results after lawful application of such proceeds, the Company shall be entitled to any such surplus.

14. Expenses. The Company shall promptly pay, and hold each Secured Party harmless against liability for the payment of, (i) all fees and expenses incurred with respect to any amendments or waivers (whether or not the same become effective) under or in respect of this Agreement, the Notes or the agreements and instruments contemplated hereby, (ii) all stamp and other taxes which may be payable in respect of the execution and delivery of this Agreement or the issuance, delivery or acquisition of the Notes and (iii) all fees and expenses incurred with respect to the enforcement of the rights granted under this Agreement, the Notes or instruments contemplated hereby or thereby.

15. Continuing Validity of Obligations.

(a) The agreements and obligations of the Company hereunder are continuing agreements and obligations and are absolute and unconditional irrespective of the genuineness, validity or enforceability of the Notes or any other instrument or instruments now or hereafter evidencing the Secured Obligations or any part thereof, this Agreement or any other agreement or agreements now or hereafter entered into by any Secured Party and the Company pursuant to which the Secured Obligations or any part thereof is issued or of any other circumstance that might otherwise constitute a legal or equitable discharge of such agreements and obligations.

(b) Without limitation upon the foregoing, such agreements and obligations shall continue in full force and effect as long as the Secured Obligations or any part thereof remains outstanding and unpaid or any commitment of any Secured Party to lend to the Company has not been terminated and shall remain in full force and effect without regard to and shall not be released, discharged or in any way affected by (i) any renewal, refinancing or refunding of the Secured Obligations in whole or in part, (ii) any extension of the time of payment of the Notes or other instrument or instruments now or hereafter evidencing the Secured Obligations or any part thereof, (iii) any release or discharge of or accord and satisfaction with the Company, (iv) any compromise or settlement with respect to the Secured Obligations or any part thereof, or any forbearance or indulgence extended to the Company, (v) any amendment to or modification of the terms of any of the Notes or other instrument or instruments now or hereafter evidencing the Secured Obligations or any part thereof or any other agreement or agreements now or hereafter entered into by any Secured Party and the Company pursuant to which the Secured Obligations or any part thereof is issued or secured, (vi) any substitution, exchange or release of, or failure to preserve, perfect or protect, or other dealing in respect of, the Collateral or any other property or any security for the payment of the Secured Obligations or any part thereof, (vii) any bankruptcy, insolvency, arrangement, composition, assignment for the benefit of creditors or similar proceeding commenced by or against the Company, or (viii) any other matter or thing whatsoever whereby the agreements and obligations of the Company hereunder would or might otherwise be released or discharged. The Company hereby waives notice of the acceptance of this Agreement by each Secured Party.

(c) To the extent that the Company makes a payment or payments to any Secured Party or any Secured Party receives any payment or proceeds of the Collateral, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to the Company or a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause of action, then, to the extent of such payment or proceeds, the Secured Obligations or portion thereof intended to be satisfied and this Agreement shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by such party.

16. Representations and Warranties. The Company hereby represents and warrants to each Secured Party that as of the date hereof:

(a) its chief executive office or its sole place of business is and since April 2006 has been located at 875 N. Michigan Avenue, Suite 1404, Chicago, Illinois 60611, and the jurisdiction of incorporation of the Company is Delaware;

(b) the full legal name of the Company is as set forth in the opening paragraph of this Agreement; and,

(c) the Company is not party to any security agreement, deed of trust, mortgage, pledge agreement or any similar agreement or instrument (other than this Agreement).

17. Secured Party's Appointment as Attorney-in-Fact. The Company hereby irrevocably constitutes and appoints each Secured Party and any officer or agent thereof, with full power of substitution and resubstitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Company and in the name of the Company or in its own name, from time to time in such Secured Party's sole discretion, without notice to or assent by the Company, to do the following:

(a) at any time when any Event of Default shall have occurred and is continuing, in the name of the Company or its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account, Instrument or Receivable or with respect to any other action or proceeding in any court of law or equity or otherwise deemed appropriate by any Secured Party for the purpose of collecting any and all such moneys due under any Account, Instrument or with respect to any other Collateral whenever payable;

(b) to pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof; and

(c) upon the occurrence and during the continuance of any Event of Default,

(i) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Secured Parties or as the Secured Parties shall direct;

(ii) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral;

(iii) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, instruments of transfer, verifications, notices and other documents in connection with any of the collateral (including in connection with the sales provided for in Section 10);

(iv) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any Proceeds thereof and to enforce any other right in respect of any Collateral;

(v) to defend any suit, action or proceeding brought against the Company with respect to any Collateral;

(vi) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as any Secured Party may deem appropriate; and

(vii) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though any Secured Party were the absolute owner thereof for all purposes.

18. Defeasance. Upon payment in full of the Secured Obligations and the termination of all obligations of the Company and the Secured Parties under the Notes, this Agreement shall terminate and be of no further force and effect (except for the provisions of Sections 14 and 15 hereof), and in such event each Secured Party shall, at the Company's expense and without recourse, representation or warranty, redeliver and reassign to the Company the Collateral and take all action necessary to terminate such Secured Party's security interest in the Collateral. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Should a claim ("Recovery Claim") be made upon any Secured Party at any time for recovery of any amount received by such Secured Party in payment of the Secured Obligations (whether received from Company or otherwise) and should such Secured Party repay all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property; or (b) any settlement or compromise of any such Recovery Claim effected by such Secured Party with the claimant (including the Company), this Agreement and the security interests granted to such Secured Party hereunder shall continue in effect with respect to the amount so repaid to the same extent as if such amount had never originally been received by such Secured Party, notwithstanding any prior termination of this Agreement, the return of this Agreement to the Company, or the cancellation of the Notes or other instrument evidencing the Secured Obligations.

19. Indemnification. The Company shall indemnify and hold harmless each Secured Party from and against any and all claims, proceedings, losses, damages, liabilities, expenses and costs arising out of or attributable to this Agreement and the granting to each Secured Party a security interest and lien in the Collateral hereunder, except claims and losses directly arising from such Secured Party's gross negligence or willful misconduct.

20. Specific Performance. The Company agrees that in addition to all other rights and remedies granted to each Secured Party in this Agreement, such Secured Party shall be entitled to specific performance and injunctive and other equitable relief, and the Company further agrees to waive any requirement for the securing or posting of any bond or other security in connection with the obtaining of any such specific performance and injunctive or other equitable relief.

21. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

22. Counterparts. This Agreement may be executed simultaneously in two or more counterparts (including facsimile counterparts), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

23. Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. The use of the word "including" in this Agreement shall be by way of example rather than by limitation.

24. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

25. Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient, sent to the recipient by reputable overnight courier service (charges prepaid) or mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the Company and to the Secured Parties at the addresses indicated below:

If to the Company:

Priva Technologies, Inc.
875 N. Michigan Ave.
Suite 1404
Chicago, IL 60611
Attention: General Counsel
Facsimile: (312) 277-6565

If to a Secured Party, to such Secured Party's address as set forth on the signature page opposite such Secured Party's signature or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

26. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

27. No Waiver or Modification of Rights and Agreements. The Company hereby covenants and agrees, for the benefit of each Secured Party, that the issuance of any Note to any such Secured Party and the execution of this Agreement shall not in any way impair, modify or diminish the rights of any such Secured Party against the Company (and the obligations of the Company to such Secured Party) that such Secured Party may have under any other notes, loan agreements or other agreements to which the Company is party and shall not be deemed in any way to constitute a waiver or consent with respect to the rights of such Secured Party (including, without limitation, a waiver of any events of default) or to constitute a waiver or consent with respect to the performance by the Company under such notes or agreements or to establish a course of dealing between the parties with respect to such notes or agreements.

28. Submission to Jurisdiction.

(a) THE COMPANY AND THE SECURED PARTIES IRREVOCABLY AGREE THAT, SUBJECT TO THE SECURED PARTIES' SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN THE COURTS HAVING SITUS WITHIN THE CITY OF NEW YORK, NEW YORK AND THE COMPANY AND THE SECURED PARTIES HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY AND STATE. THE COMPANY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST THE COMPANY BY THE SECURED PARTIES IN ACCORDANCE WITH THIS SECTION 28.

(b) NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE SECURED PARTIES TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE COMPANY IN ANY OTHER APPROPRIATE JURISDICTION.

30. Remedies Cumulative; No Waiver. The rights and remedies herein expressly provided are cumulative, may be exercised singly or concurrently and as often and in such order as any Secured Party deems expedient, and are not exclusive of any rights or remedies which such Secured Party would otherwise have whether by agreement or now or hereafter existing under applicable law. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party to any other or further action in any circumstances without notice or demand. No failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder and no course of dealing between the Company and such Secured Party shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to the exercise of any right or remedy which such Secured Party would otherwise have on a future occasion.

IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement as of the day and year first above written.

PRIVA TECHNOLOGIES, INC.

By: ______________________________

Mark Heatwole, Executive Vice President

[SIGNATURE PAGE TO SECURITY AGREEMENT]

SECURED PARTIES

NAME

PRO MARKETING SALES, INC.

(Name, PLEASE PRINT)

(Title, if applicable)

4/16/08

DATE

ADDRESS

1350 Bluegrass Lakes Parkway
Alpharetta, Georgia 30004
(p) 770-442-2534

NAME

[ ]

(Name, PLEASE PRINT)

(Title, if applicable)

DATE

ADDRESS

NAME

[ ]

(Name, PLEASE PRINT)

(Title, if applicable)

DATE

ADDRESS

NAME

[ ]

(Name, PLEASE PRINT)

(Title, if applicable)

DATE

ADDRESS

[SIGNATURE PAGE TO SECURITY AGREEMENT]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CYBER SOLUTIONS INTERNATIONAL, LLC,

Plaintiff,

Case No. 1:13-CV-867

v.

HON. ROBERT HOLMES BELL

PRIVA SECURITY CORPORATION, et al.,

Defendants.

_______________________________________/

OPINION

This action involving conflicting claims to encryption technology is before the Court on the parties' cross-motions for summary judgment on Defendant Pro Marketing Sales' counterclaim for declaratory judgment. (ECF Nos. 29, 45.)[1] For the reasons that follow, Defendant's motion will be granted and Plaintiff's motion will be denied.

I.

Defendant Priva Technologies, Inc. developed microchip encryption technology known as Secured Key Storage Integrated Circuit ("SKSIC"). The SKSIC technology provides a unique means of confirming a person's identity when that person is attempting to access data that is either stored or in transmission. The SKSIC chip is sufficiently foolproof

[1] The original complaint was filed in Case No. 1:13-CV-202. After a remand to the bankruptcy court, Bankr. No. 13-80076, the case was re-filed in this court under Case No. 1:13-CV-867. This opinion will reference pleadings filed under all three case numbers.

to warrant its application in circumstances where the information in question is highly classified. (Hughes 6/19/12 Oral Confirmation Op., Tr. 14, No. 1:13-CV-202, ECF No. 13-3.) Defendant Pro Marketing Sales ("PMS" or "Pro Marketing") has a first position lien on all assets of Priva, including the SKSIC, pursuant to an April 16, 2009, security agreement entered into in conjunction with a loan Pro Marketing made to Priva.[2] (Sec. Agrmt., ECF No. 45-25.)

Before Priva had sufficiently perfected its invention for marketing, its creditors began demanding repayment. Priva filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Act. *In re Priva Technologies, Inc.*, No. HK 11-12574 (Bankr. W.D. Mich.). On March 8, 2012, Pro Marketing filed a motion for relief from stay to enable it to commence proceedings to foreclose on substantially all of the Debtors' assets. (Reorg. Plan, Disclosure Statement at 18, No. 1:13-CV-202, ECF No. 1-3, Page ID#98.) On April 19, 2012, Priva entered into a Design Service and Intellectual Property License Agreement ("License Agreement" or "IP License") with Plaintiff Cyber Solutions, International, LLC ("CSI"). (IP License, ECF No. 45-3.) Priva granted CSI an exclusive license to its SKSIC technology in exchange for $200,000, an additional $200,000 advance for future design

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[2] Pro Marketing and Priva agreed that the Security Agreement secured a debt owed by Priva to Pro Marketing in the amount of $1.6 million principal, which, together with accrued interest, resulted in a total obligation of $1,953,872.71 as of January 24, 2013, the date of the Asset Transfer Agreement. (Asset Transfer Agrmt, ECF No. 45-13.) As of October 24, 2014, Pro Marketing claimed that over $3.4 million was due on the note. (Dales Oct. 24, 2014, Op. 15, ECF No. 40.)

services by Priva related to the SKSIC technology, and the promise of substantial royalties over time from military and commercial applications. The License Agreement grants CSI "a worldwide, perpetual, royalty-bearing, exclusive license to the Licensed Technology to develop, make, have made, manufacture, use, import, export, offer to sell and sell Products and Systems incorporating the Licensed Technology . . . ." (License Agrmt§ 2.1.) The License Agreement also provides that CSI "shall have the right to pursue improvements to the Licensed Technology" and that CSI "shall own and have exclusive title to improvements." (License Agrmt§ 2.3.) Section 5.2 of the License Agreementprovides that "Any updates, modifications or improvements to the Licensed Technology developed by Licensor and paid for by Licensee shall be the property of Licensee." (License Agrmt§ 5.2)

Licensed Technology is defined to mean:

> [A]ll Intellectual Property and Know-How (i) owned by Licensor; and (ii) incorporated in or specifically relating to the SKSIC delivered to Licensee hereunder. Any updates, modifications or improvements to the Licensed Technology developed by Licensor after the Effective Date and not paid for by Licensee under the Design Services in Article 6 will be deemed part of the Licensed Technology and Licensor will provide such updates, modifications or improvements to Licensee as soon as commercially practicable.

(License Agrmt§ 1.7.)

The License Agreement was the central feature of the Reorganization Plan. The Plan was approved by the Bankruptcy Court over Pro Marketing's objections. Although the Plan gave CSI an exclusive license to use and develop the SKSIC technology, it preserved the security interest of Pro Marketing in the SKSIC IP. (Plan at 20.) Judge Hughes noted that "while the technology is being licensed to CSI, that license is subordinate to Pro Marketing Sales' superior lien." (Hughes Confirm. Op. 35.) Judge Hughes further noted that "if Priva were to default under the terms of the plan such that Pro Marketing could exercise its collateral rights, it would be able to recover . . . the SKSIC technology in whole notwithstanding the license that is being granted as part of this plan." (*Id.*)

After entering into the License Agreement, Priva began developing a second generation SKSIC product for CSI known as Tamper Reactive Secure Storage ("TRSS"), with product number PDS8006-B. (Am. Compl. ¶ 15, ECF No. 12.)

The License Agreement did not generate the revenues that Priva expected. Less than a year after the Plan was confirmed, Priva continued to suffer cash shortages and was unable to meet its obligations. (Dales Op. at 5.) On January 25, 2013, Priva's Board determined that Priva did not have adequate funds to continue operations. (Berman Decl. ¶ 5, ECF No. 45-11.) The Security Agreement provides that on default Pro Marketing may take possession and control of the Collateral and Proceeds with or without judicial process, and proceed to exercise the rights and remedies accorded to a secured party under the UCC. (Security Agrmt ¶ 12, ECF No. 45-25.) Priva determined that a friendly foreclosure with Pro Marketing was its best option. (Sibert Dep. 23-24, ECF No. 30-1.) Priva's Board entered into an Asset Transfer and Transition Funding Agreement and surrendered the SKSIC and the computer servers containing the intellectual property to Pro Marketing. (Asset Transfer Agrmt, ECF No. 30-3.) Thereafter, Priva's president, William Sibert, sent CSI a letter terminating the License Agreement based on his assertion that CSI breached certain obligations under the License Agreement. (Sibert Letter, ECF No. 45-12.)

On February 22, 2013, CSI filed an action in this Court requesting a temporary restraining order prohibiting Pro Marketing from selling or disposing of the SKSIC technology. *Cyber Solutions, Int'l, LLC v. Priva Securities Corp.*, 1:13-CV-202 (W.D. Mich.). CSI contends that it did not breach any obligations under the License Agreement, and further contends that the TRSS technology belongs to CSI and is not subject to Pro Marketing's security interest. CSI seeks an order declaring that the License Agreement is valid and enforceable by CSI, declaring that CSI is the owner of the TRSS Technology, enjoining Defendants from disposing of the SKSIC and PDS8006B Technology, requiring Defendants to transfer the TRSS Technology to CSI, and awarding CSI compensatory damages. (Am. Compl., ECF No. 12.) Pro Marketing filed a counterclaim seeking a declaration that it lawfully possesses Priva's collateral and that it is permitted to market, sell, or license the SKSIC/TRSS technology. (ECF No. 14.)

This Court referred CSI's motion for preliminary injunction to the bankruptcy court. In April 2013, the Priva Chapter 11 reorganization was converted to a Chapter 7 bankruptcy and a Trustee was appointed.

After a two-day evidentiary hearing in May 2013, Judge Hughes granted CSI's request for a preliminary injunction enjoining Pro Marketing from disposing of the SKSIC technology. However, he denied CSI's motion for an order requiring Pro Marketing to deposit the property in third-party escrow. (Order, Bankr. No. 13-80076, ECF No. 44.) In his June 5, 2013, bench opinion, Judge Hughes found that CSI was likely to prevail on its argument that it did not breach the License Agreement, and that the claimed breaches did not warrant termination of the License Agreement. (Hughes June 5, 2013, Prelim. Inj. Oral Op., Tr. 26, Bankr. No. 13-80076, ECF No. 42.) However, he emphasized that his ruling was limited to the issue of whether CSI was in breach of the License Agreement, and that he was making no ruling on whether Pro Marketing should be restrained in its own right from enforcing its own security interest in the SKSIC technology now that Priva had filed for Chapter 7 relief. (*Id.* at 31-32.) Judge Hughes nevertheless deemed it important to preserve the status quo until the Chapter 7 Trustee had more time to determine what position the estate would take vis-à-vis the SKSIC technology – whether surrendering it to Pro Marketing was best, or whether it wanted to try to continue the License Agreement with Priva in the hope of obtaining royalties for the estate. (*Id.* at 38-39.)

The matter came back before this Court under the current case number. (ECF No. 1, Mot. to Withdraw Ref.) After a settlement conference, the Trustee and CSI entered into a proposed settlement. Because the proposed settlement involved the Trustee's authority to amend the License Agreement, the matter was referred back to the Bankruptcy Court. On July 22, 2014, Judge Dales held that the property surrendered to Pro Marketing before conversion to Chapter 7 is included within the property of the Chapter 7 estate. (Dales Op. 5 n.3.) After a four-day evidentiary hearing, Judge Dales denied the proposed settlement based on his conclusion that the proposal to amend the License Agreement after the conversion to a Chapter 7 bankruptcy was not based on sound business judgment and was inconsistent with Pro Marketing's interests. (*Id.* at 21.)

The case is now back before this Court. Pro Marketing has requested summary judgment on its counterclaim for a declaration that it lawfully possesses the collateral and can sell it because it properly foreclosed on its security interest in the SKSIC/TRSS technology. CSI opposes the motion and has requested summary judgment in its favor on the counterclaim.

II.

The Federal Rules of Civil Procedure require the Court to grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In evaluating a motion for summary judgment the Court must look beyond the pleadings and assess the proof to determine whether there is a genuine need for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). If the movant carries its burden of showing there is an absence of evidence to support a claim, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories, and admissions on file that there is a genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324-25 (1986).

In reviewing a motion for summary judgment this Court cannot weigh the evidence, make credibility determinations, or resolve material factual disputes. *Alman v. Reed*, 703 F.3d 887, 895 (6th Cir. 2013); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (stating that on a motion for summary judgment "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge"). "Instead, the evidence must be viewed, and all reasonable inferences drawn, in the light most favorable to the non-moving party." *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 569-70 (6th Cir. 2012) (citing *Matsushita*, 475 U.S. at 587; *Biegas v. Quickway Carriers, Inc.*, 573 F.3d 365, 374 (6th Cir. 2009)). Nevertheless, the mere existence of a scintilla of evidence in support of Plaintiff's position is not sufficient to create a genuine issue of material fact. *Liberty Lobby*, 477 U.S. at 252. The proper inquiry is whether the evidence is such that a reasonable jury could return a verdict for Plaintiff. *Id.*; *see generally Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-80 (6th Cir. 1989).

III.

Pro Marketing moves for summary judgment on its counterclaim based on its assertion that it is entitled to possession of the SKSIC technology pursuant to its security agreement. Based on the language of the Reorganization Plan and Judge Hughes's explanation for his approval of the Plan, the Court finds that there is no question of fact that Pro Marketing has a priority interest in the SKSIC technology and that as a result of Priva's default on its indebtedness, Pro Marketing has the right to enforce its security interest. According to Pro Marketing, this should be the end of the Court's analysis. Priva has, however raised some issues that need to be considered.

A. Automatic Stay

CSI contends, as a preliminary matter, that Pro Marketing does not have standing to seek validation of its foreclosure because the automatic stay in bankruptcy has not been lifted. In response, Pro Marketing has advised the Court that the Trustee has agreed to lift the stay if this Court dissolves the preliminary injunction. (PMS Reply at 4.)

Pro Marketing's representation is consistent with the parties' statement in their joint status report that the bankruptcy court determined that it did not have jurisdiction to rule on Pro Marketing's motion for dissolution of the preliminary injunction order given the terms of this Court's limited reference order. (Jt. Status Rpt, ECF No. 38.) The bankruptcy court is clearly anticipating that this Court will make the determination regarding Pro Marketing's rights under its Security Agreement. As Judge Dales indicated, "[a]nother court with broader jurisdiction . . . may decide whether the TRSS belongs to CSI free and clear of, or subject to, Pro Marketing's security interest." (Dales Op. 10 n.7.) This case has been bouncing between the two courts long enough, and the parties are entitled to a ruling on Pro Marketing's rights under its Security Agreement. Accordingly, the Court is satisfied that Pro Marketing has standing to bring its motion for summary judgment on its counterclaim.

B. Pro Marketing's Interest in the TRSS

There is no dispute that Pro Marketing has a security interest in the SKSIC technology. The April 16, 2009, Security Agreement gave Pro Marketing a first priority security interest in all of the Collateral of Priva. (Sec. Agrmt ¶ 2, ECF No. 45-25.) The heart of the parties' dispute concerns which party has superior rights to the improvements to the

SKSIC technology, known as the TRSS. The Court assumes that the TRSS is not severable from the SKSIC technology because this argument was not made either at the preliminary injunction hearing or in conjunction with the present motion.

CSI contends that it owns the improvements to the SKSIC technology pursuant to the terms of the License Agreement that was made a part of the Reorganization Plan. Pro Marketing contends that its security interest covers improvements to the SKSIC technology.

Pro Marketing's Security Agreement defines "collateral" as all types or items of personal property owned by Priva, "whether now owned or hereinafter arising or acquired," including "all Intellectual Property" and "all products and Proceeds of any and all" of the property described. (Sec. Agrmt ¶ 1.) The Security Agreement defines "Intellectual Property" to include Copyrights, and defines "Copyrights," to mean:

> all copyrights arising under the laws of the United States, . . . including without limitation all mask works fixed in semiconductor chip products (as defined under 17 U.S.C. §901 of the U.S. Copyright Act), whether registered or unregistered, published or unpublished, now or hereafter in effect and all registrations and recordings thereof, and . . . (iv) all proceeds of any of the foregoing, including, without limitation, all licenses, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable arising from, out of or in connection with any of the foregoing.

Id.

Notwithstanding the broad language of the Security Agreement, CSI asserts that Pro Marketing has no security interest in the TRSS. CSI contends that pursuant to the terms of the License Agreement, which was part of the Bankruptcy Reorganization Plan, CSI owns all subsequent generations of the SKSIC technology, including the TRSS. The License

Agreement specifically provides that "Licensee shall have the right to pursue improvements to the Licensed Technology" and that "Licensee shall own and have exclusive title to improvements." (License Agrmt ¶ 2.3.) CSI contends that because the License Agreement was a central part of the Reorganization Plan, and because Pro Marketing did not appeal the Reorganization Plan, Pro Marketing cannot challenge the provision in the License Agreement that gives CSI exclusive title to improvements.

The Court disagrees. The License Agreement between Priva and CSI explicitly recognized that "SKSIC is subject to certain liens and security interests which continue notwithstanding Licensor's entry into this License Agreement." (License Agrmt Recitals.) Moreover, Pro Marketing's interest in improvements to the SKSIC was not altered by the Bankruptcy Reorganization Plan. Consistent with the Security Agreement, the Plan gives Pro Marketing "a Lien on any Pro Marketing Collateral, . . . with the same priority that existed prior to the Petition Date and to the extent of the unpaid balance of the Allowed Pro Marketing Secured Claim, until the Allowed Pro Marketing Secured claim is paid in full. The Plan provides that "Pro Marketing will retain its Lien on the SKSIC IP, in accordance with § 1129(b)(2)(A) of the Bankruptcy Code, notwithstanding the Reorganized Debtor's entry into the License Agreement or the grant of the License" until Pro Marketing's Secured Claim is paid in full. (Plan § 5.2.4.)

Judge Hughes, in approving the Plan over Pro Marketing's objection, made it clear that in the event Priva failed to live up to its end of the bargained reorganization, CSI's License remained subordinate to Pro Marketing's lien. Judge Hughes explicitly acknowledged Pro Marketing's rights to reclaim the collateral after a breach:

> The Court would also add that, while the technology is being licensed to CSI, that license is subordinate to Pro Marketing Sales' superior lien. And, as such, if Priva were to default under the terms of the plan such that Pro Marketing could exercise its collateral rights, it would be able to recover. . . the SKSIC technology in whole notwithstanding the license that is being granted as part of this plan.

(Hughes Confirmation Op. 35.)

Judge Hughes reiterated his rationale for approving the Plain in his opinion on the preliminary injunction:

> (1) Cyber solutions itself acknowledged in the recitals of the licensing agreement that the SKSIC technology was subject to PMS's continuing lien in the same, and (2) whether or not PMS's lien would have continuing priority over Cyber Solutions' license rights was a key issue in this Court's own determination last summer as to whether the plan that Priva proposed could be confirmed over PMS's objection. In particular, this Court was very concerned whether the license being contemplated between Cyber Solutions and Priva was in fact a 363 sale of the technology free and clear of PMS's lien interest, given that the license was to be perpetual and exclusive and worldwide. This of course gave the Court pause because PMS was an objecting class whose interest in Priva's collateral could not be impaired under Section 1129(b)'s absolute priority rule. As such, the Court went forward with confirmation only after first receiving assurances from Priva that PMS's interest were not being so impaired; that is, that Cyber Solutions was gaining its license rights to the SKSIC technology subject to PMS's own lien of rights in the same, and therefore Cyber Solutions was assuming the risk that these rights might be disrupted were Priva later to default under the separate arrangement it had with PMS concerning its claim and attendant lien rights under the confirmed plan.

(Hughes Prelim. Inj. Op. 32-33.) More recently, Judge Dales confirmed that the bankruptcy court's approval of Priva's Plan of Reorganization "clearly preserved the security interest of Pro Marketing in the Debtor's technology, specifying that CSI's interest in the technology under the Original License was subordinate to the interests of PMS." (Dales Op. 4.) As

Judge Dales reiterated,"[t]he Plan explicitly preserves PMS's security interest as it needed to do in order to pass muster under § 1129(b)(2)(A)(i)(l)." (Dales Op. 13.)

Although the License Agreement purports to grant CSI ownership over improvements to the SKSIC, Priva did not have authority to grant such ownership to CSI in light of the terms of Pro Marketing's security interest. CSI itself has acknowledged that the TRSS technology is a "derivative product" that is "based upon the SKSIC Technology". (Am. Compl. ¶¶ 15, 17, ECF No. 12.) Indeed, as Judge Dales noted, because the Security Agreement defines "Copyright Licenses" to mean "all agreements providing for the granting of any right in or to any Copyright (whether the Company is licensee or licensor thereunder) and the granting of any right in any derivative work based upon any copyright," Priva's (or the Trustee's) authority to grant CSI any interest in the TRSS is itself subject to Pro Marketing's security interest. (Dales Op. 10 n.6.)

Accordingly, despite the language of the License Agreement, the clear intent of the Plan (i.e., the security interest continues "notwithstanding the License Agreement or the grant of the License"), and more importantly, Judge Hughes' Opinion approving the Plan, was to permit Pro Marketing to recover its collateral in full in the event of a Priva default. CSI entered into the License Agreement knowing the risk, and Judge Hughes's Opinion confirming the Plan confirms that all of the collateral reverts to Pro Marketing in the event of a default.

Based on the language of the Security Agreement, the Plan, and Judge Hughes's opinion confirming the Plan, the Court concludes that Pro Marketing's security interest in the intellectual property that is the basis of the License Agreement continues and extends to any modifications and enhancements to that intellectual property made after the execution of the Security Agreement, including the TRSS material claimed by CSI. Accordingly, Pro Marketing's Security Agreement applies to improvements to the SKSIC technology, including the TRSS.

C. License as Proceeds

CSI contends that Judge Dales brought clarity to this case when he identified the original license as proceeds and any royalty payments to be paid as proceeds of proceeds. CSI contends that in light of Judge Dales's proceeds ruling, Pro Marketing has no possessory right in the SKSIC, and if Pro Marketing forecloses on its security interest, Pro Marketing is at best only entitled to receive royalty payments to be paid under the License Agreement that would otherwise have been paid to Priva.

Contrary to CSI's argument, Judge Dales's proceeds discussion does not purport to limit Pro Marketing's foreclosure rights. Judge Dales confirmed that Pro Marketing's Security Agreement extends to proceeds of the SKSIC collateral including the Original License and, if approved, the Amended License. (Dales Op. 15.) However, he did not suggest that Pro Marketing's security interest was limited to the License. The discussion was made in conjunction with Judge Dales's determination as to whether the Trustee's proposal to enter into an amended License Agreement with CSI and to quit-claim any interest in the TRSS was an appropriate exercise of business judgment. Judge Dales found that it was not because it was "wholly inadequate and inconsistent" with Pro Marketing's security interests that were ratified in the Plan. (Dales Op. 20-21.) Judge Dales did not suggest that Pro Marketing did not have a security interest in the TRSS. He specifically declined to rule on whether the TRSS belongs to CSI free and clear of, or subject to, Pro Marketing's security interest, in light of the bankruptcy court's limited jurisdiction. (Dales Op. 10 n.7.) The Court is wholly unpersuaded by CSI's proceeds argument.

D. Derivative Rights from the Government

CSI contends that Pro Marketing cannot take possession of the SKSIC technology because CSI holds rights in the SKSIC technology derived from the National Security Agency, the government sponsor of the SKSIC. CSI contends that the SKSIC was developed with funds provided by the government under a contract that included the following clause: "The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in (technical data/computer software and computer software documentation)." CSI has also pointed to federal regulations providing that the government shall have "unlimited rights" in "data pertaining to an item, component or process which has been or will be developed exclusively with Government funds."

This argument is not sufficiently developed to enable the Court to place any stock in it. The documents CSI has provided regarding the Trusted Foundry Mask Release and Letter confirming the Trusted Foundry Mask Loan suggest that Priva has entered into some kind of a relationship with the National Security Agency, but the nature and import of that relationship, and its bearing on Pro Marketing's security interest in the SKSIC technology, is wholly unclear. (CSI Br., Exs. 25, 26, ECF No. 45.) Moreover, if, as CSI contends, the government has a substantial interest in this case, the government has not made its position known to this Court. Accordingly, the Court finds no merit to CSI's suggestion that Pro Marketing's foreclosure is prohibited as a result of rights CSI has obtained from the government.

E. Breach of the License Agreement and Unclean Hands

CSI contends that Pro Marketing should be denied summary judgment because Priva improperly terminated the License Agreement and because Pro Marketing has unclean hands.

Priva terminated the License Agreement with CSI based on its assertion that CSI engaged the services of Integra Technology rather than Priva in breach of its obligation to exclusively rely on Priva to provide all services, and because CSI refused to pay for design services provided from July through October 2012. (Sibert letter, CSI Br. Ex. 11.) CSI has presented evidence that it did not breach the License Agreement and that Priva did not give it an opportunity to cure. Judge Hughes concluded after the hearing on the preliminary injunction that CSI had "a relatively strong case that it was not in breach of the license agreement." (Hughes Prelim. Inj. Op. 15.) This Court is satisfied that CSI has presented sufficient evidence to create an issue of fact as to whether it breached the License Agreement and as to whether Priva failed to give it an opportunity to cure. (*See*, *e.g.*, CSI Br., Exs. 5-11, 15, 17, 21, 27, 28, ECF No. 45.) Accordingly, for purposes of this opinion, the Court will assume that the License Agreement was not properly terminated. Nevertheless, as Judge Hughes noted in his opinion on the preliminary injunction, whether CSI breached the License Agreement is a separate and distinct issue from the question of whether Pro Marketing should be prohibited from enforcing its security interest in the SKSIC technology after Priva's demise. (Hughes Prelim. Inj. Op. 31.) The termination of the License Agreement may be relevant to the intentional interference claims in CSI's amended complaint, but it does not have a material bearing on Pro Marketing's right to foreclose on its Security Agreement.

CSI also complains that Pro Marketing had unclean hands. CSI has presented evidence that Priva only terminated the License Agreement because Pro Marketing required it to do so, and that Priva's William Sibert had a personal stake in the termination of the License Agreement that he did not disclose to the Priva Board. (*See* CSI Br., Exs. 13, 16, 18-20.) Declaratory relief, which is what Pro Marketing is seeking in its counterclaim, is equitable relief, and thet Court is empowered to grant or withheld such relief on equitable grounds. *Great Lakes Dredge & Dock Co. v. Hoffman*, 319 U.S. 293, 300 (1943). The unclean hands doctrine "'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior.'" *Cleveland Newspaper Guild, Local 1 v. Plain Dealer Pub. Co.*, 839 F.2d 1147, 1155 (6th Cir. 1988) (quoting *Precision Inst. Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 814 (1945)).

CSI's unclean hands argument relates solely to the termination of the License Agreement. CSI contends that Pro Marketing prompted Priva to terminate the License Agreement with CSI over trumped up allegations of CSI's breach. As noted above, the termination of the License Agreement does not have a material bearing on Pro Marketing's right to foreclose on its Security Agreement. Pro Marketing's right foreclose on the Security Agreement depends on its possessory rights to the assets and the default of Priva under the note. CSI has presented no evidence to suggest that Priva was not in default under the note, nor has CSI challenged Pro Marketing's evidence that Priva's decision to close shop was a decision made by the Priva Board without any improper influence from Pro Marketing. (Sibert Dep. 23-24, ECF No. 30-1.) The undisputed evidence reflects that Priva's board decided it was unable to continue operations and that Priva, not Pro Marketing, originated the idea of a "friendly foreclosure." (*Id.*) Accordingly, even if Pro Marketing had unclean hands with respect to the termination of the License Agreement, that does not affect the legitimacy of Pro Marketing's retaking of its collateral after Priva closed down.

IV.

For the foregoing reasons, the Court will grant Pro Marketing's motion for summary judgment on its counterclaim, and deny CSI's cross-motion for summary judgment. The Court will enter a declaratory judgment declaring that Pro Marketing lawfully possesses Priva's collateral pursuant to its Security Agreement, and that Pro Marketing is permitted to market, sell and/or license the SKSIC/TRSS technology.

An order and partial judgment consistent with this opinion will be entered.

Dated: February 26, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: January 11, 2016

Mr. John Donley Adams

Mr. Matthew Allen Fitzgerald

Ms. Emily Rebecca Gantt

Mr. Daniel G. Kielczewski

Mr. Erik Olson

Re: Case No. 15-1359, *Cyber Solutions Intl LLC v. Pro Marketing Sales, Inc.*
Originating Case No. : 1:13-cv-00867

Dear Counsel:

The Court issued the enclosed Opinion today in this case.

Sincerely yours,

s/Amy E. Gigliotti
Case Manager
Direct Dial No. 513-564-7012

cc: Ms. Tracey Cordes

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 16a0018n.06

No. 15-1359

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 11, 2016
DEBORAH S. HUNT, Clerk

Cyber Solutions International, LLC, Plaintiff-Appellant, v. Pro Marketing Sales, Inc., Defendant-Appellee.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN OPINION

BEFORE: MOORE, CLAY, and GILMAN, Circuit Judges.

RONALD LEE GILMAN, Circuit Judge. This case involves a dispute between two competing lenders as to which one is entitled to a microchip encryption technology developed by their mutual borrower Priva Technologies, Inc. (Priva) that is now in Chapter 7 bankruptcy. The technology in question is known as Tamper Reactive Secure Storage (TRSS). Pro Marketing Sales, Inc. (Pro Marketing) bases its claim on its 2009 Security Agreement with Priva, whereas Cyber Solutions International, LLC (Cyber) bases its competing claim on its 2012 License Agreement with Priva.

Both lenders eventually filed claims seeking declaratory and/or injunctive relief to clarify ownership of the TRSS technology. The district court granted summary judgment in favor of Pro Marketing on the basis that Pro Marketing's Security Agreement gave it a superior claim to the TRSS technology. For the reasons set forth below, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

A. Priva and the secured loan from Pro Marketing

Priva is a Delaware corporation that, until recently, developed products to store and protect digital information. In 2007, Priva began working on a microchip encryption technology known as the Secured Key Storage Integrated Circuit (SKSIC). Priva required capital to finance the development of this and other products, so it turned to Pro Marketing to obtain a secured loan. The companies executed a document memorializing the loan (the Security Agreement) on April 16, 2009. This agreement grants Pro Marketing a first-position lien on all of Priva's assets. It defines the "Collateral" for the loan as

> all types or items of personal property owned by [Priva], whether now owned or hereafter arising or acquired, and wherever located, or in which [Priva] now has or at any time in the future may acquire any right, title or interest, including, without limitation, all of the following property . . . (xv) all Intellectual Property; . . . and (xviii) to the extent not otherwise included, all products and Proceeds of any and all of the foregoing property described above.

The Security Agreement then defines "Intellectual Property" to mean "all rights, priorities and privileges relating to intellectual property . . . , including without limitation the Copyrights, the Copyright Licenses . . . , and all Goodwill associated with or arising in connection with any of the foregoing." This agreement also limits Priva's rights with respect to the Collateral. It specifically provides that Priva cannot

> sell, transfer, assign, convey or otherwise dispose of, or extend, amend, terminate or otherwise modify any term or provision of any license of [Priva's] Intellectual Property, other than in the ordinary course of business, or other agreement relating to, any Collateral, any interest therein or any Proceeds thereof, nor waive or release any right with respect thereto, without the prior written consent of [Pro Marketing]; provided, [that Priva] may sell or otherwise dispose of items of Collateral which, individually, do not exceed $50,000 in value.

B. Bankruptcy filing and license agreement with Cyber

Priva's business proved less successful than its owners had hoped. Its creditors began demanding repayment and, in December 2011, Priva filed a petition in the Bankruptcy Court for the Western District of Michigan for relief under Chapter 11 of the Bankruptcy Code. Priva's bankruptcy constituted a default under the terms of its Security Agreement, which caused Pro Marketing to begin the process of foreclosing on Priva's assets in March 2012.

In the meantime, Priva worked to develop a bankruptcy reorganization plan and to acquire additional assets with which to pay its debts. It consequently began negotiating with Cyber, which was interested both in acquiring the SKSIC technology and in hiring Priva to develop additional technology. The companies eventually signed a Design Service and Intellectual Property License Agreement (the License Agreement) on April 19, 2012. Pursuant to the License Agreement, Cyber made two $200,000 payments to Priva. In return for the first payment, Cyber received an exclusive license to the SKSIC technology and, in return for the second payment, it received certain rights in future technologies that Priva developed.

Cyber's rights to the future technologies are defined in Article 5.2 of the License Agreement, which provides that

> [a]ny updates, modifications or improvements to the Licensed Technology [i.e., SKSIC] developed by [Priva] and paid for by [Cyber] shall be the property of [Cyber.] [Priva] agrees to assign and agrees to assign in the future (when any such updates, modifications, or improvements to the Licensed Technology are first reduced to practice or first fixed in a tangible medium, as applicable) to [Cyber] all right, title and interest in and to any and all updates, modifications, or improvements to the Licensed Technology (and all proprietary rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by [Priva], either alone or jointly with others, during the period of Design Services engagement with [Cyber].

The License Agreement thus establishes that all "updates, modifications, or improvements" to the SKSIC technology that Priva developed with Cyber's funding would be assigned to and owned by Cyber.

Finally, the License Agreement acknowledges Pro Marketing's preexisting security interest in Priva's assets. It states that the "SKSIC is subject to certain liens and security interests" and expressly acknowledges that those interests would "continue notwithstanding [Priva's] entry" into the License Agreement.

C. Bankruptcy proceedings

On June 20, 2012, the bankruptcy court approved Priva's First Amended and Restated Combined Joint Plan of Reorganization and Disclosure Statement (the Reorganization Plan). As part of the Reorganization Plan, the court specifically approved the License Agreement that Priva had executed with Cyber.

Pro Marketing objected to the Reorganization Plan's incorporation of the License Agreement. It argued that the License Agreement was not in the interest of either the bankruptcy estate or of Pro Marketing because the Plan did not secure fair value for the SKSIC technology and because it "usurp[ed]" Pro Marketing's interest in Priva's assets.

The bankruptcy court overruled Pro Marketing's objections. It noted that although "the technology [was] being licensed to [Cyber], that license [was] subordinate to Pro Marketing Sales' superior lien." In addition, the court stated that "if Priva were to default under the terms of the plan such that Pro Marketing could exercise its collateral rights, it would be able to recover . . . the SKSIC technology in whole notwithstanding the license that is being granted as part of this plan." The court thus concluded that the License Agreement did not jeopardize Pro Marketing's security interest, making Pro Marketing's objections unwarranted.

After the Reorganization Plan was approved, Priva continued its operations and began developing a second-generation SKSIC product at the behest of Cyber. These efforts resulted in the completion of a new product known as Tamper Reactive Secure Storage (TRSS). The parties do not dispute that Cyber provided the funding for the TRSS development and that the TRSS technology constitutes an "update, modification, or improvement" of the SKSIC technology.

Cyber and Priva expected TRSS to be a commercial success, but Priva continued to suffer cash shortages and was unable to meet its obligations under the Reorganization Plan. Priva's board of directors accordingly voted in January 2013 to cease operations and allow Pro Marketing to exercise its rights under the Security Agreement. The two companies thereafter arranged for a "friendly foreclosure" on Priva's assets. This resulted in Priva surrendering to Pro Marketing the SKSIC technology, the TRSS technology, and the computers containing Priva's other intellectual property.

Contemporaneously, Priva notified Cyber that it was unilaterally terminating the parties' License Agreement. As grounds for the termination, Priva asserted that Cyber had materially and incurably breached the License Agreement by seeking design services from companies other than Priva.

D. District court proceedings

Cyber responded to the above events by filing suit against Priva and Pro Marketing in the United States District Court for the Western District of Michigan. It first requested a declaratory judgment that Cyber had not breached the License Agreement and that the License Agreement remained enforceable. Cyber also sought a declaration that, pursuant to the terms of the License Agreement, it owned the TRSS technology. In connection with this claim, Cyber sought a preliminary injunction to prevent Pro Marketing from disposing of either the SKSIC technology or the TRSS technology. It also requested an order requiring Priva and/or Pro Marketing to transfer the TRSS technology to Cyber.

Pro Marketing counterclaimed with its own request for a declaratory judgment. It asked the district court to declare that Pro Marketing was the rightful owner of both the SKSIC and TRSS technologies and that Pro Marketing was entitled to freely exercise its rights of ownership.

The district court referred Cyber's request for a preliminary injunction to the bankruptcy court. That court concluded that it should "preserve the status quo" to afford additional time for the bankruptcy estate to determine how best to dispose of the disputed assets. Cyber's request that the SKSIC and TRSS technologies be transferred to it was denied, but the court granted Cyber's request for a preliminary injunction forbidding Pro Marketing from "taking any . . . steps to sell, market or otherwise dispose" of either technology.

With the injunction in place, the parties returned to the district court. Pro Marketing subsequently moved for summary judgment on its counterclaim on the ground that the Security Agreement authorized Pro Marketing to foreclose on and then sell or license both the SKSIC and TRSS technologies. Cyber opposed the motion on various grounds. Of relevance to this appeal, Cyber argued that its License Agreement with Priva precluded any finding that Pro Marketing had any rights in the TRSS technology. Cyber also maintained that Pro Marketing had "unclean hands" with regard to its termination of the License Agreement, thus barring Pro Marketing from seeking equitable relief.

The district court rejected Cyber's arguments and granted summary judgment in favor of Pro Marketing. It thereafter entered an order declaring "that Defendant Pro Marketing Sales lawfully possesses Priva's collateral pursuant to its Security Agreement, and that Pro Marketing is permitted to market, sell and/or license the SKSIC/TRSS technology."

Cyber now appeals the district court's order. It argues that (1) its rights to the TRSS technology are superior to those of Pro Marketing, and (2) the district court erred by refusing to apply the doctrine of unclean hands as a bar to Pro Marketing's request for declaratory relief.

II. ANALYSIS

A. Standard of review

Cyber first asserts that the district court erred by granting summary judgment in favor of Pro Marketing on the basis of Pro Marketing's Security Agreement with Priva. We review de novo a grant of summary judgment. Meridian Leasing, Inc. v. Associated Aviation Underwriters, Inc., 409 F.3d 342, 346 (6th Cir. 2005). Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Gecewicz v. Henry Ford Macomb Hosp. Corp., 683 F.3d 316, 321 (6th Cir. 2012). We construe all disputed facts in the light most favorable to the nonmovant, id., but the parties in the present case largely agree on the relevant facts. Their dispute instead turns on the district court's interpretation of their contractual agreements, which we also review de novo. See Meridian Leasing, 409 F.3d at 346.

Cyber next asserts that the district court should have applied the doctrine of unclean hands to preclude Pro Marketing's request for declaratory relief. We review the application of the unclean-hands doctrine under the abuse-of-discretion standard, Performance Unlimited, Inc. v. Questar Publishers, Inc., 52 F.3d 1373, 1383 (6th Cir. 1995), but pure questions of law related to that doctrine are subject to de novo review. Bonner Farms, Ltd. v. Fritz, 355 F. App'x 10, 17 (6th Cir. 2009) (citing *Ne. Women's Ctr., Inc. v. McMonagle*, 868 F.2d 1342, 1354 (3d Cir. 1989)).

B. Choice of law and rules of contract interpretation

The district court had jurisdiction pursuant to diversity of citizenship, so we "must apply the choice of law rules of the state in which [the district court] sits." Rosen v. Chrysler Corp., 205 F.3d 918, 921 n.2 (6th Cir. 2000). Michigan courts enforce contractual choice-of-law provisions, Johnson v. Ventra Grp., Inc., 191 F.3d 732, 739 (6th Cir. 1999), and the Security Agreement, the License Agreement, and the Reorganization Plan each contain such a provision.

The Security Agreement provides for interpretation under "the laws of the State of New York," so New York law governs that Agreement. Next, the Reorganization Plan states that both the Plan and any agreements executed in connection with the Plan are to be interpreted under Michigan law. Because the License Agreement was executed in connection with the Reorganization Plan, Michigan law governs the interpretation of the License Agreement.

Courts in both New York and Michigan begin their interpretation of a contract with the language of the contract itself. If that language is unambiguous, then the courts will enforce the plain meaning of the contact's terms. See, e.g., Russo v. Estee Lauder Corp., 856 F. Supp. 2d 437, 460 (E.D.N.Y. 2012) ("Under New York law, the Court must look first to the parties' written agreement to determine the parties' intent and limit its inquiry to the words of the agreement itself if the agreement sets forth the parties' intent clearly and unambiguously." (citation and alterations omitted)); Harbor Park Mkt., Inc. v. Gronda, 743 N.W.2d 585, 588 (Mich. Ct. App. 2007) ("The goal of contract interpretation is to first determine, and then enforce, the intent of the parties based on the plain language of the agreement.").

Whenever possible, courts in both jurisdictions read contracts to give effect to all of the contract's terms. Zahn v. Kroger Co. of Mich., 764 N.W.2d 207, 211 (Mich. 2009) ("All contracts . . . should be construed to ascertain and give effect to the intentions of the parties and should be interpreted to give a reasonable meaning to all of [their] provisions."); Smith v. City of Buffalo, 120 A.D.3d 1588, 1589 (N.Y. App. Div. 2014) ("It is well settled that a contract must be read as a whole to give effect and meaning to every term. Indeed, a contract should be interpreted in a way that reconciles all of its provisions, if possible." (citation and alterations omitted)). The overall goal is to arrive at an interpretation that effectuates the parties' intent. See, e.g., Rasheed v. Chrysler Corp., 517 N.W.2d 19, 29 n.28 (Mich. 1994) ("The primary goal in the construction or interpretation of any contract is to honor the intent of the parties."); Frye v. Brown, 189 A.D.2d 1031, 1033 (N.Y. App. Div. 1993) ("Undoubtedly, the ultimate goal in contract interpretation is realization and effectuation of the parties['] intent . . . .").

C. The district court correctly determined that the TRSS technology falls within the scope of Pro Marketing's security interest

Cyber does not dispute that Pro Marketing has a first-position lien on certain Priva assets. The dispositive issue is therefore whether the TRSS technology falls within the scope of that lien. If so, then the TRSS technology belongs to Pro Marketing; if not, then the TRSS technology belongs to Cyber.

1. The plain meaning of the Security Agreement and the License Agreement *support the district court's conclusion* that the TRSS technology was part of *Pro Marketing's security interest*

Our interpretation begins with the language of the parties' contracts. See Russo, 856 F. Supp. 2d at 460; Harbor Park, 743 N.W.2d at 588. As noted above, the Security Agreement defines the "Collateral" for Pro Marketing's loan to Priva as "all types or items of personal property owned by [Priva], whether now owned or hereafter arising or acquired, . . . in which [Priva] now has or at any time in the future may acquire any right, title or interest." The Security Agreement thus defines the collateral in terms of ownership. If Priva "own[s]" or "acquires" an item of "personal property," then that property is part of the collateral securing Pro Marketing's loan.

The Security Agreement then states that the "personal property" at issue includes all of Priva's "Intellectual Property" and "Copyrights." These terms broadly include "all rights, priorities and privileges relating to" copyrights, trademarks, patents, and trade secrets, as well as "all mask works fixed in semi-conductor chip products." All of the intellectual-property rights that Priva "owned" or "acquired" at any time were therefore part of the collateral for Pro Marketing's loan.

Cyber argues, however, that the TRSS technology does not fit within this broad definition of the collateral. It relies on Article 5.2 of the License Agreement, which states that if Cyber pays for any "updates, modifications or improvements" to the SKSIC technology, then such updates, modifications, or improvements "shall be the property of [Cyber]." The License Agreement then reiterates that "[Priva] agrees to assign and agrees to assign in the future . . . to [Cyber] all right, title and interest in and to any and all updates, modifications, or improvements" for which Cyber provided funding.

Cyber reads Article 5.2 as instantly and automatically divesting Priva of any and all rights in any update, improvement, or modification to the SKSIC technology. It maintains that, as soon as any such modification of the SKSIC technology was completed, that modification immediately became the property of Cyber. This would mean that any rights in the modifications never passed through Priva's hands and, as a consequence, that Priva "never owned" those rights.

Applying this reading, Cyber notes that it paid for the development of the TRSS technology and that the TRSS is indisputably an "update, modification, or improvement" to the

SKSIC technology. It thus maintains that all rights in the TRSS technology were immediately transferred to Cyber, such that Cyber "owned the TRSS from the moment it came into existence."

This conclusion purportedly removes the TRSS technology from the scope of Pro Marketing's collateral. If the TRSS technology was never owned by Priva, then the technology would fall outside the scope of the Security Agreement's definition of "Collateral," and Pro Marketing's security interest would never have attached.

But Cyber's argument rests on an erroneous reading of the License Agreement. Article 5.2 states that Priva "agrees to assign and agrees to assign in the future" its rights in any modifications to the SKSIC technology. This provision does not instantly grant any rights to Cyber; rather, it implicitly recognizes that Priva itself will acquire rights that it must then assign. See, e.g., Abraxis Bioscience, Inc. v. Navinta LLC, 625 F.3d 1359, 1365 (Fed. Cir. 2010) ("[C]ontract language stating that a party 'agrees to assign' reflects a mere promise to assign rights in the future, not an immediate transfer of expectant interests.").

The License Agreement, in other words, acknowledges that Priva might develop certain updates, modifications, or improvements to the SKSIC technology, and that, in doing so, it will acquire the rights to those updates, modifications, or improvements. Only after this initial acquisition of the rights does the License Agreement provide for the assignment of those rights to Cyber. The License Agreement therefore contemplates that any rights in updates, modifications, or improvements to the SKSIC technology will in fact first become the property of Priva.

This interpretation is consistent with the parties' intent. Cyber and Priva plainly intended that Article 5.2 would lead to Cyber's eventual acquisition of ownership in the technologies that it paid Priva to develop. Under Michigan law, however, an assignee or transferee acquires no greater rights in the property at issue than the assignor or transferor itself possessed. See

McDonald v. Asset Acceptance LLC, 296 F.R.D. 513, 526 (E.D. Mich. 2013) (citing Coventry Parkhomes Condo. *Ass'n v. Fed. Nat. Mortg. Ass'n*, 827 N.W.2d 379, 382 (Mich. Ct. App. 2012)) ("[A]n assignee steps into the shoes of the assignor and only acquires such rights as the assignor possessed at the time of assignment."); Pellerito v. Weber, 177 N.W.2d 236, 237 (Mich. Ct. App. 1970) ("It is axiomatic that a person cannot convey greater title than he possesses."). Hence, if Priva really did "agree[] to assign and agree[] to assign in the future" its rights in any modifications to the SKSIC technology—as the License Agreement says Priva did—then Priva must have first acquired certain rights in the modifications or technologies to be assigned.

And this places those rights within the scope of Pro Marketing's collateral. Upon the completion of any modification to the SKSIC technology, Priva—however briefly—acquired the rights to that modification. Those rights were then "items of personal property owned . . . or acquired" by Priva, so those rights were included in the Security Agreement's definition of "Collateral." Pro Marketing therefore acquired a security interest in the TRSS technology that was and is superior to Cyber's claim to the technology.

This result should come as no surprise to Cyber because it knew at the time that it executed the License Agreement that such an outcome was possible. The License Agreement itself acknowledges the existence of Pro Marketing's security interest, and the bankruptcy court explicitly noted that Cyber was "assuming the risk" that its rights under the License Agreement "might be disrupted" by Pro Marketing's Security Agreement.

Cyber evidently determined that this risk was worth taking, and it cannot escape the consequences of its decision to enter the License Agreement simply because it is now unhappy with the outcome. See, e.g., Gogoe v. Wells Fargo Bank N.A., No. 14-12502, 2015 WL 5591102, at *10 (E.D. Mich. Sept. 21, 2015) (applying Michigan law) ("The Court . . . is not authorized to re-write contracts in order to rescue one party or another from a bad deal."); Eujoy Realty Corp. v. *Van Wagner Commc'ns*, LLC, 4 N.E.3d 336, 343 (N.Y. 2013) ("Courts will give effect to the contract's language and the parties must live with the consequences of their agreement.").

To rebut the above interpretation of the License Agreement, Cyber cites Article 7 of the Security Agreement, which provides that Priva must defend its title to Pro Marketing's collateral "against the claims and demands of all other persons." Cyber then alleges that, during the bankruptcy proceedings, Priva did not vigorously defend its rights to the TRSS technology, with the implication that Priva must not have considered the TRSS technology to be part of Pro Marketing's collateral.

We find this argument unpersuasive. Priva's alleged failure to defend against Cyber's claim could be evidence that Priva did not consider the TRSS technology to be part of Pro Marketing's collateral, but this failure could also indicate simply that Priva breached Article 7 or that Pro Marketing agreed to waive Article 7's requirements. See, e.g., De Freitas v. Holley, 93 A.D.2d 852, 853 (N.Y. 1983) ("It is well established that a party for whose benefit a provision is inserted in a contract may waive that provision and accept performance of the contract as is . . . ."). At most, then, Priva's alleged failure is vague and equivocal evidence that cannot overcome the above-described plain meaning of the contractual language. See, e.g., Little v. Kin, 664 N.W.2d 749, 750 (Mich. 2003) ("Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted."); Brad H. v. City of New York, 951 N.E.2d 743, 746 (N.Y. 2011) ("A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties . . . .").

2. Priva lacked the authority to grant Cyber superior rights in the TRSS technology

Cyber's claim to the TRSS technology is also subject to a second flaw: Priva did not have the unfettered authority to grant the rights that it purported to grant in the License Agreement. As noted above, the Security Agreement limits Priva's right to dispose of assets pledged to Pro Marketing. It specifically states that Priva cannot transfer "any Collateral, any interest therein or any Proceeds thereof, nor waive or release any right with respect thereto, without the prior written consent of [Pro Marketing.]" And, as noted above, the definition of "Collateral" includes "Copyright Licenses." These licenses are defined as

> all agreements providing for the granting of any right in or to any Copyright (whether [Priva] is licensee or licensor thereunder) and the granting of any right in any derivative work based upon any Copyright, together with . . . any other rights or privileges to use or practice any Copyright or arising under, or corresponding or relating to, any of the foregoing.

Next, Article 5.2 of the License Agreement purports to grant Cyber "all right, title and interest in and to any and all updates, modifications or improvements to the Licensed Technology . . . whether or not . . . registrable under copyright or similar statutes." This provision plainly attempts to assign both Priva's rights "in or to [a] Copyright" and Priva's rights "corresponding or relating to" a copyright. Article 5.2 of the License Agreement therefore constitutes a "Copyright License" under the terms of Pro Marketing's Security Agreement, so the grant of rights defined in Article 5.2 was and is part of Pro Marketing's collateral.

This means that Priva did not have the unfettered authority to dispose of that collateral; instead, any waiver, release, or transfer of the collateral required "the prior written consent of [Pro Marketing.]" Nothing in the record indicates that Pro Marketing provided such consent before Priva executed the License Agreement and, in fact, Pro Marketing objected to the incorporation of the License Agreement as part of Priva's Reorganization Plan. Priva therefore lacked the authority to grant to Cyber the unconditional rights that it purported to grant. Article 5.2 was a Copyright License, the Copyright License was part of Pro Marketing's collateral, and Priva needed Pro Marketing's written approval before Priva could dispose of that collateral. Priva did not have that approval, so its attempt to unconditionally dispose of the collateral by assigning it to Cyber was ineffective.

This interpretation is also consistent with the language in the Security Agreement that defines Pro Marketing's "Collateral" to include all of Priva's personal property "whether now owned or hereafter arising or acquired, . . . or in which [Priva] now has or at any time in the future may acquire any right, title, or interest." The parties plainly intended to grant Pro Marketing a security interest that would extend to property—such as the TRSS technology—that was not in existence at the time the Security Agreement was signed. Moreover, the parties specifically protected Pro Marketing's right to such after-acquired property by forbidding Priva from selling or transferring such property without Pro Marketing's prior written consent.

An interpretation of the Security Agreement that would allow Priva to evade Pro Marketing's security interest by disposing of the TRSS technology in the absence of such consent would consequently contravene the intent of the parties. Hence, the Security Agreement should not be read to allow such an interpretation. See, e.g., Frye v. Brown, 189 A.D.2d 1031, 1033 (N.Y. App. Div. 1993) ("Undoubtedly, the ultimate goal in contract interpretation is realization and effectuation of the parties['] intent . . . ."). The Security Agreement must instead be read to protect Pro Marketing's interest in the TRSS technology.

D. The district court did not abuse its discretion or commit an error of law by refusing to consider evidence of Pro Marketing's allegedly unclean hands

We next turn to Cyber's "unclean hands" argument. The doctrine of unclean hands is an equitable concept that allows a court to deny injunctive or declaratory relief when "the party applying for such relief is guilty of conduct involving fraud, deceit, unconscionability, or bad faith related to the matter at issue to the detriment of the other party." Performance Unlimited, Inc. v. Questar Publishers, Inc., 52 F.3d 1373, 1383 (6th Cir. 1995) (quotation marks omitted). Cyber maintains that the district court abused its discretion and/or committed an error of law by imposing a requirement that the conduct at issue have a "material bearing" on the culpable party's claim for relief.

The unclean-hands argument in this case rests on the events that led to Priva's termination of its License Agreement with Cyber. As alleged in Cyber's amended complaint, Pro Marketing sued Priva's president—William Sibert—in Georgia state court in January 2012. That suit sought up to $2.6 million in damages on the ground that Sibert had fraudulently induced Pro Marketing to extend financing to Priva.

In January 2013, Sibert and Pro Marketing reached a settlement in which Pro Marketing agreed to dismiss the state-court lawsuit against Sibert. Cyber alleges that this settlement resulted from improper pressure by Pro Marketing. It maintains that Pro Marketing planned to foreclose on its security interest in the SKSIC technology, but was concerned that the License Agreement would impair the value of the SKSIC technology because the Agreement purported to grant Cyber an exclusive license to that technology. Pro Marketing thus allegedly had a motive to have the License Agreement terminated.

According to Cyber, Pro Marketing found the means to do so by leveraging its state-court action against Sibert. Pro Marketing allegedly promised to dismiss the lawsuit against Sibert provided that Sibert—as president of Priva—caused Priva to terminate its License Agreement with Cyber. Sibert purportedly accepted this agreement and caused Priva's board of directors to terminate the License Agreement, all without disclosing that Sibert stood to personally benefit from that termination.

Based on these events, Cyber asserted a claim against Pro Marketing for intentional interference with contractual relations. In addition, Cyber claimed that these events supported the application of the unclean-hands doctrine to Pro Marketing's claim to the TRSS technology. The district court rejected this latter argument on the ground that the two claims were independent. Pro Marketing's alleged role in the termination of the License Agreement, according to the court, had no "material bearing" on Pro Marketing's separate claim for ownership of the TRSS technology, making an application of the unclean-hands doctrine unwarranted. Cyber now challenges that ruling on the ground that the district court adopted an erroneously narrow conception of the unclean-hands doctrine.

As noted above, the doctrine of unclean hands precludes declaratory relief when the party seeking relief is "guilty of conduct involving fraud, deceit, unconscionability, or bad faith related to the matter at issue." Performance Unlimited, 52 F.3d at 1383. This doctrine, however, does not grant courts free-floating authority to deny declaratory relief in all cases in which a party has engaged in misconduct. Instead, the doctrine "requires that the alleged misconduct on the part of the plaintiff relate directly to the transaction about which the plaintiff has made a complaint." Id. (emphasis added). A court should therefore apply the doctrine "only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation." Id. (citation and internal quotation marks omitted).

Michigan caselaw applies the doctrine in a similar fashion. "The misconduct which will move a court of equity to deny relief must bear a more or less direct relation to the transaction concerning which [a] complaint is made." McFerren v. B & B Inv. Grp., 655 N.W.2d 779, 784

(Mich. Ct. App. 2002) (emphasis added) (quoting McKeighan v. Citizens Commercial & Savings Bank of Flint, 5 N.W.2d 524, 527 (Mich. 1942)). "Relief is not denied merely because of the general morals, character or conduct of the party seeking relief." Id.

Applying these principles to the present case, the district court did not abuse its discretion in deciding not to apply the doctrine of unclean hands. Pro Marketing executed its Security Agreement in April 2009, years before Pro Marketing filed the state-court action against Sibert. Likewise, Priva entered the License Agreement and began developing the TRSS technology long before Sibert and Pro Marketing executed the allegedly improper settlement agreement. Pro Marketing's security interest in the TRSS technology therefore arose entirely independent of its alleged misconduct in pressuring Sibert to terminate the License Agreement. That termination accordingly had no "immediate and necessary relation," Performance Unlimited, 52 F.3d at 1383, to Pro Marketing's claim to the TRSS technology.

Cyber nonetheless argues that, by filing a counterclaim for a declaratory judgment, Pro Marketing itself admitted that its claim to the TRSS technology "aro[se] out of the transaction or occurrence that [was] the subject matter of [Cyber's] claim." See Fed. R. Civ. P. 13(a)(1)(A) (defining compulsory counterclaims). According to Cyber, Pro Marketing's counterclaim is a tacit concession that ownership of the TRSS technology did in fact "relate directly" to the allegedly improper termination of the License Agreement.

This argument fails, however, because Cyber's amended complaint contains several causes of action. One of these is indeed its claim that termination of the License Agreement constituted interference with contractual relations. But the amended complaint also contains claims for declaratory and injunctive relief that seek to establish that Cyber is the owner of the TRSS technology. Pro Marketing's request for a declaratory judgment concerns ownership of the exact same technology—i.e., TRSS—so Pro Marketing's claim arises out of the same transaction or occurrence giving rise to Cyber's claim to the TRSS technology. This means that Pro Marketing was indeed obligated to file a counterclaim to Cyber's claim to the TRSS technology if Pro Marketing wished to preserve its own claim of ownership. See Fed. R. Civ. P. 13(a)(1)(A). Pro Marketing's counterclaim was therefore not a tacit concession that the TRSS technology had any direct connection to the allegedly improper termination of the license agreement.

Cyber finally contends that the district court's interpretation of the unclean-hands doctrine was overly narrow and erroneous as a matter of law. We review such an argument de novo. See *Ne. Women's Ctr., Inc. v. McMonagle*, 868 F.2d 1342, 1354 (3d Cir. 1989) ("[T]he parameters of the unclean hands doctrine implicate a matter of law.").

The district court's opinion implicates the "parameters" of the unclean-hands doctrine insofar as the court restricted application of the doctrine to conduct that has a "material bearing" on a party's claims. This restriction, however, was not a legal error. To the contrary, the district court's requirement of a "material bearing" is consistent with this court's prior observations that the conduct must have a "direct[]" or "immediate and necessary relation" to the relevant claim. See Performance Unlimited, 52 F.3d at 1383. The court's formulation is also consistent with Michigan law, which requires a "more or less direct" relationship between the allegedly improper conduct and the claim at issue. See McFerren, 655 N.W.2d at 784; accord, e.g., Murray v. Moultrie, No. 259410, 2006 WL 2060681, at *2 (Mich. Ct. App. July 25, 2006) (declining to apply the unclean-hands doctrine when improper conduct was "not inextricably linked" to claim at issue). The district court therefore committed no legal error on this issue.

III. CONCLUSION

For all of the reasons set forth above, we **AFFIRM** the judgment of the district court.