### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, DC

### Before The Honorable E. James Gildea Administrative Law Judge

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

# NON-PARTIES TEXAS INSTRUMENTS INCORPORATED AND BAHER HAROUN'S MOTION TO QUASH COMPLAINANTS' SUBPOENAS FOR HEARING TESTIMONY

Pursuant to Commission Rule 210.15 and Ground Rule 2.1, non-parties Texas Instruments Incorporated ("TI") and Baher Haroun jointly move to quash the subpoenas *ad testificandum* served on them on April 22, 2013 (the "Trial Subpoenas") by Complainants Technology Properties Limited LLC and Phoenix Digital Solutions LLC (collectively, "Complainants").

The Trial Subpoenas require a representative(s) from TI and Mr. Haroun, a TI employee, to appear at the evidentiary hearing on June 3, 2013, to provide testimony on various broad topics regarding TI OMAP and audio codec chips used in certain Respondents' accused products.

The Trial Subpoenas should be quashed because Complainants are improperly attempting to use them as a means of circumventing the discovery deadlines ordered by the Administrative Law Judge. Complainants previously served a document and deposition subpoena on TI covering the *exact* testimony they now want TI to provide at trial, but, having failed to take TI's deposition during the discovery period, are improperly seeking to procure TI's testimony *ab initio* at the hearing.

In addition, under the circumstances presented here, forcing compliance with the Trial

Subpoenas would impose substantial hardship on TI because of the effort and expense involved

in identifying, preparing, and sending multiple witnesses to testify at trial on short notice. There

is no justification for imposing such a burden on TI given Complainants' lack of diligence during

discovery.

For the reasons detailed in the supporting Memorandum submitted herewith, TI and Mr.

Haroun respectfully requested that the Administrative Law Judge quash the Trial Subpoenas in

their entirety.

Ground Rule 2.2 Certification

Pursuant to Ground Rule 2.2, TI and Mr. Haroun certify that they, through counsel,

notified Complainants and Respondents about this Motion two business days before filing, and

notified the Commission Investigative Attorney ("Staff") one day before filing, and offered to

meet and confer in attempt to reach a resolution. Respondents have indicated that they support

this Motion and Complainants have indicated that they oppose this Motion. Staff has indicated

that they will take a position after reviewing the Motion.

Dated: May 2, 2013

Respectfully submitted,

Bv: John J. Patti

j-patti@ti.com

Texas Instruments Incorporated

MS 3999

P.O. Box 655474

Dallas, TX 75265-5474

Telephone: 214-479-1239

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ATTORNEY FOR DEFENDANT

**TEXAS INSTRUMENTS** 

INCORPORATED

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### In the Matter of Certain Wireless Consumer Electronics Devices and Components Thereof Investigation No. 337-TA-853

#### CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2013, copies of NON-PARTIES TEXAS INSTRUMENTS INCORPORATED AND BAHER HAROUN'S MOTION TO QUASH COMPLAINANTS' SUBPOENAS FOR HEARING TESTIMONY were served upon the following parties as indicated:

The Honorable Lisa R. Barton

The Honorable Lisa R. Barton ☑ Via EDIS Acting Secretary ☐ Via Hand Delivery U.S. International Trade Commission ☑ Via Overnight Delivery 500 E Street, SW ☐ Not Served Washington, DC 20436 The Honorable E. James Gildea ☐ Via Hand Delivery Administrative Law Judge ☑ Via Overnight Delivery (2 Copies) U.S. International Trade Commission ☑ Via Email to Attorney Advisors 500 E Street, S.W., Room 317 (sarah.zimmerman@usitc.gov; Washington, DC 20436 Kenneth.schopfer@usitc.gov) ☐ Not Served R. Whitney Winston, Esq. ☐ Via Hand Delivery Office of Unfair Import Investigations ☐ Via Overnight Delivery U.S. International Trade Commission ☑ Via Email 500 E Street, S.W., Room 401-G ☐ Not Served Washington, DC 20436

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James C. Otteson AGILITY IP LAW, LLP 149 Commonwealth Drive Menlo Park, CA 94025 Telephone: (650) 227-4800 TPL853@agilityiplaw.com

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Ш	Via Hand Delivery
	Via Overnight Delivery
	Via Email

✓ Via Email

Not Served

Telephone: (480) 646-3434

# Counsel for Complainant Counsel for Complainant Patriot Scientific Corporation

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Dated: April 30, 2013

JOHN J. PATTI

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, DC

### Before The Honorable E. James Gildea Administrative Law Judge

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

# MEMORANDUM IN SUPPORT OF NON-PARTIES TEXAS INSTRUMENTS INCORPORATED AND BAHER HAROUN'S MOTION TO QUASH COMPLAINANTS' SUBPOENAS FOR HEARING TESTIMONY

Pursuant to Commission Rule 210.15 and Ground Rule 2.1, non-parties Texas Instruments Incorporated ("TI") and Baher Haroun jointly move to quash the subpoenas *ad testificandum* served on them on April 22, 2013 (the "Trial Subpoenas") by Complainants Technology Properties Limited LLC and Phoenix Digital Solutions LLC (collectively, "Complainants"). The Trial Subpoenas require a representative(s) from TI and Baher Haroun, a TI employee, to appear at the evidentiary hearing on June 3, 2013, to provide testimony on eight broad topics regarding TI OMAP and audio codec chips used in certain Respondents' accused products.

Complainants could have obtained the information they seek from TI during fact discovery, which ended on February 22, 2013. Complainants served subpoenas for documents and deposition testimony on TI six months ago, but never deposed a TI witness or sought to compel TI to provide a witness for deposition. With the hearing imminent, Complainants have now decided that they want TI to provide at least two fact witnesses, even though TI understood that it had fulfilled its obligations under Complainants' prior subpoena. As a result, instead of offering a witness for deposition during the fact discovery period at a time and place convenient

for TI and its employees, Complainants now seek to force TI to bear the burden of bringing TI's witnesses across the country to provide fact evidence for the first time at the hearing.

The Complainants' Trial Subpoenas should be quashed for two distinct reasons. First, Complainants should not be allowed to use the trial subpoena procedure to obtain discovery. Second, under the particular circumstances presented here, forcing compliance with the Trial Subpoenas would impose substantial hardship on TI. There is significant effort and expense involved in identifying, preparing, and sending multiple witnesses to testify at trial on short notice, and there is no justification for imposing such a burden on TI given Complaints' lack of diligence in obtaining, during the fact discovery period, the facts they now seek.

### I. FACTUAL BACKGROUND

The original Complaint filed in this Investigation on July 24, 2012, did not name TI as a party. Instead, the Complaint identified TI's OMAP processors and audio codec chips used in six of the twelve Respondents' accused products. The OMAP chips are used in certain of the Amazon, Barnes & Noble, Garmin, Huawei, and LG Respondents' accused products, while the codec chips are used only in the Nintendo Respondents' accused products. I

This Investigation was instituted on August 21, 2012, and an eighteen-month target date was set. ITC Notice of Institution of Investigation 337-TA-853 (Aug. 21, 2012); Order No. 3 (Sept. 4, 2012). Complainants knew, or should have known, prior to filing their Complaint that they would need discovery from TI to prove their case, but did not subpoena TI until November 2, 2012 (hereinafter, the "2012 Subpoena," attached as Ex. A).

<sup>&</sup>lt;sup>1</sup> The Respondents' remaining accused products use non-TI manufactured products.

### A. Complainants Made No Effort to Pursue Discovery Regarding the Codec Chips

The 2012 Subpoena requested documents and deposition testimony regarding both the OMAP chips and audio codec chips. *See* Ex. A. However, Complainants did not follow up regarding discovery relating to the audio codec chips. *See* Declaration of Sarah Vollbrecht ¶ 9, attached as Ex. B. Although TI produced only about 7,000 pages of documents regarding the audio codec chips prior to the close of discovery, compared to about 42,000 pages of documents regarding the OMAP chips, Complainants never requested additional documents during fact discovery. Moreover, Complainants did not specifically request a deposition related to the audio codec chips. Ex. B ¶ 9. As a result, a deposition never took place regarding the audio codec chips.

## B. Complainants Initially Requested, But Failed to Diligently Pursue Discovery Regarding the OMAP Chips

In early December 2012, TI produced 42,037 pages of documents regarding TI's OMAP chips, in response to TPL's document subpoena. Ex. B. ¶ 4. TI also produced 7,649 pages of documents regarding TI's audio codec chips, in response to a subpoena served by the Nintendo Respondents. Id. ¶ 5. Complainants contacted TI in early January regarding scheduling depositions for the ITC Investigation, as well as two district court cases. Id. ¶ 7-8. During the course of these discussions, TI explained that it had a significant reduction-in-force at the end of 2012, that heavily impacted its OMAP business. Thus, TI was having difficulty finding employees in the U.S. with personal knowledge of the relevant portions of the OMAP chips. Id. ¶ 6, 8. As explained above, Complainants did not specifically request a deposition regarding the audio codec chips at issue but, instead, focused on TI's OMAP chips. Id. ¶ 9.

<sup>&</sup>lt;sup>2</sup> TI considered its document production complete at that time. It was not until March 18, 2013, well after the close of fact discovery, that TPL approached TI about supplementing its document production. *Id.* ¶ 11.

Complainants ceased all requests for a deposition towards the end of January 2013. *Id.* ¶ 10. Complainants did not renew their request for a TI deposition at any time prior to the close of fact discovery, which TI now understands to have been February 22, 2013. *See* Order No. 15 (Jan. 9, 2013) (Amending the Procedural Schedule). Complainants never filed any motion to compel; nor was TI ever asked to provide a declaration stating that it had no one to present for deposition.

## C. The Trial Subpoenas Are Co-Extensive With the Prior Subpoena That Complainants Largely Failed to Pursue During Discovery

On April 22, 2013, Complainants served subpoenas for trial testimony on TI and Baher Haroun (attached as Exs. C & D). The Trial Subpoenas seek testimony from a corporate TI representative and Baher Haroun on topics that are nearly identical to the 2012 Subpoena. *Compare* Ex. A with Ex. C and Ex. D. The testimony sought in the Trial Subpoenas is encompassed within the discovery sought by the 2012 Subpoena.

### II. ARGUMENT

In evaluating a motion to quash a subpoena, the Commission requires a balancing of: (1) the relevance of the information sought; (2) the need of the requesting party; and (3) the potential hardship to the responding party. See Certain Optical Disk Controller Chips & Chipsets & Products Containing Same, Inv. No 337-TA-506, Order No. 38 (Feb. 7, 2005).

Given Complainants' failure to diligently pursue discovery from TI, the significant hardship TI would incur if forced to bring witnesses to trial is unjustified and outweighs any claimed need for the testimony. Complainants' attempt to procure new evidence from TI at the eleventh hour also runs afoul of the Procedural Schedule set by the Administrative Law Judge in this Investigation and the orderly process of discovery mandated by the Commission Rules.

### A. Complainants Were Not Diligent in Obtaining Discovery From TI

Complainants are responsible for timely obtaining whatever discovery they believe necessary to prove their case. Complainants identified TI chips in their Complaint, which were contained in Respondents' products, and which included structures or functionality relevant to Complainants' infringement theory. Complainants could (and should) have foreseen that they would need discovery from TI, potentially including testimony from TI witnesses, to support their claims. Nevertheless, Complainants have shown a consistent lack of diligence in obtaining evidence from TI. After Complainants served the 2012 Subpoena, they failed to follow through with obtaining the very same information they now want TI to appear at trial to provide.

i. Complainants made no efforts to pursue discovery related to the codec chips.

Complainants identified several different audio codec chips in their Complaint filed in July 2012. The 2012 Subpoena, served on TI on November 2, 2012, included broad categories of documents and deposition testimony covering the audio codec chips. See Ex. A. Complainants had almost four months after issuing the subpoena until the close of fact discovery in which to pursue discovery from TI. See Order No. 15 (Jan. 9, 2013) (ordering the close of fact discovery on February 22, 2013). Yet, Complainants made no efforts to pursue documents or deposition testimony regarding the codec chips, in particular, after serving the 2012 Subpoena. For example, after TI made its December 2012 document productions, Complainants did not follow up with TI before the close of fact discovery to request additional documents. Ex. B. ¶ 11. Nor did Complainants ever specifically request deposition testimony concerning the design and/or operation of the audio codec chips. Id. ¶ 9. Thus, Complainants effectively abandoned the 2012 Subpoena as it pertained to the audio codec chips.

ii. Complainants did not diligently pursue deposition testimony regarding the OMAP chips.

Complainants made minimal efforts to obtain document discovery regarding TI's OMAP chips, but did not diligently pursue deposition testimony relating to those products. After receiving TI's December 2012 productions and learning that TI had exited certain market segments and had significant reductions-in-force in the relevant business, Complainants ceased any pursuit of a deposition on the OMAP chips. At no time did Complainants insist on a deposition related to the OMAP chips or attempt to enforce its deposition subpoena through a motion to compel. As a result, TI understood its obligations under the subpoena to be discharged; it had no expectation of being called to testify at the hearing in this Investigation when Complainants were previously willing to forego (or did not otherwise move to compel) a TI deposition.

## B. TI Should Not Have to Shoulder the Burden of Bringing Witnesses to Trial to Compensate for Complainants' Discovery Failures

Had Complainants been diligent in their pursuit of discovery and taken a deposition during discovery, it would have minimized the disruption to TI because TI would have had the ability to select a convenient date and location to provide testimony. Under the Commission's rules and practice, Complainants could then have used TI's deposition at trial. See 19 C.F.R. 210.28(h)(3). However, forcing TI to provide testimony by bringing witnesses to trial would impose a substantial hardship in a variety of ways.

i. Preparing multiple witnesses for trial would be unduly burdensome.

If forced to provide the requested corporate testimony, TI will have to prepare at least two different employees to testify at trial (including Baher Haroun): one regarding the OMAP chips and one regarding the audio codec chips. Moreover, the preparation of these witnesses would have to be completed in the short period of time remaining before trial begins on June 3, 2013.

In this case, the internal preparation TI would have to undertake to provide witnesses at trial is unduly burdensome. TI has had significant reductions-in-force in its OMAP business. To provide the requested testimony on these products, TI will likely need to devote significant employee time to research and analysis of whatever records may still exist relating to the OMAP chips, and then attempting to educate a witness based on this internal analysis. *Cf. Certain Light-Emitting Diodes and Products Containing Same*, Inv. No. 337-TA-798, Order No 20 at 6 (Mar. 1, 2012) (finding that requiring a non-party to perform "detailed technical analysis" to determine if it was in possession of responsive documents and things was unduly burdensome).

With respect to the codec chips, given Complainants' complete failure to pursue any codec-related discovery, TI has not prepared any witness to testify regarding codec-related issues. It would be disruptive and burdensome for TI to provide a witness at trial.

Furthermore, the over-breadth of the topics set out in the Trial Subpoenas increases the hardship on TI if it is forced to prepare witnesses to testify. Complainants are only one month away from trial and thus should be capable of drafting narrow, precise topics for testimony. Yet, the Trial Subpoenas list very broad and general topics, such as the "structure and function" of eleven different OMAP chips and audio codec chips. See Exs. C & D at 3-4. As another example, rather than identifying specific interfaces on the chip relevant to their infringement claims, the Trial Subpoenas seek testimony regarding all of the numerous interfaces that exist in each of the eleven chips. See id. at 4 (requesting testimony regarding all "I/O protocol specifications, I/O interfaces, data transfer, and chip packaging"). In light of Complainants' decision to forego a deposition during the discovery period, these broad topics only highlight the

fact that the Trial Subpoenas are not designed to confirm discovery TI has already provided, but to correct or otherwise change its strategy in this Investigation. TI should not be made to bear the burden on Complainants' late change in strategy.

ii. TI would lose significant employee working time if forced to send multiple witnesses to trial.

In addition to the extensive preparation that compliance with the Trial Subpoenas would require, TI faces further hardship if forced to send multiple employees (including Baher Haroun) to testify during the course of a two-week trial. Those employees will be occupied and unable to perform their job responsibilities while attending the hearing. Further employee time will be lost over the days the TI witnesses would have to spend traveling to and from their respective locations at TI facilities in Texas.

iii. TI would incur substantial expense in bringing witnesses to trial.

In addition to the financial loss associated with lost employee working time, TI would have to incur significant expense to fly multiple witnesses and TI legal representatives across the country and obtain lodging for them during the course of the two-week trial.<sup>3</sup>

### C. The Hardship to TI Should Outweigh Any Alleged Need for the Requested Testimony

The hardship TI faces if forced to identify, prepare, and bring multiple witnesses to trial should outweigh whatever need Complainants may allege for the requested testimony. Indeed, with respect to the audio codec chips, it is unclear how Complainants could persuasively claim a need for the requested testimony given their complete failure to pursue it during discovery. With respect to the OMAP chips, Complainants' marked lack of diligence led TI to believe they already had most of the information they thought they needed; and if that was not the case, this

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<sup>&</sup>lt;sup>3</sup> Despite its unreasonable course of action in failing to pursue during discovery the very testimony Complainants now want TI to provide at trial, Complainants have not offered to cover TI's travel or other costs that would be incurred in connection with the Trial Subpoenas.

information should have been sought with much more urgency during the appropriate discovery

period.

Furthermore, because Complainants never deposed a TI witness, they cannot know of any

specific information that a TI witness could provide at trial. Effectively, Complainants are

seeking to depose TI witnesses on the stand when that exercise should have been completed

months ago. See Certain Commc'n Equipment, Inv. No 337-TA-817, Order No. 13 at 7 (May 29,

2012) ("a third party subpoena is not a fishing expedition"). Such an exercise would not only be

unfair to TI, but an inefficient use of Commission resources in conducting the evidentiary

hearing.

III. CONCLUSION

For these reasons, TI and Baher Haroun respectfully request that the Administrative Law

Judge quash the Subpoenas requiring them to attend and provide testimony at trial in this

Investigation.

Dated: May 2, 2013

Respectfully submitted.

John J. Patti

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Texas Instruments Incorporated

MS 3999

P.O. Box 655474

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Telephone: 214-479-1239

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ATTORNEY FOR DEFENDANT

**TEXAS INSTRUMENTS** 

**INCORPORATION** 

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# Exhibit A



### **Service of Process Transmittal**

11/02/2012

CT Log Number 521538090

TO:

Mark Patrick, VP & Asst. Gen. Csl. Texas Instruments Incorporated 13588 N. Central Expressway, MS 3999

Dallas, TX 75243

RE: Process Served in California

Texas Instruments Incorporated (Domestic State: DE) FOR:

### enclosed are copies of legal process received by the statutory agent of the above company as follows:

TITLE OF ACTION: RE: In The Matter of Certain Wireless Consumer Electronics Devices and Components

Thereof // To: Texas Instruments Incorporated

DOCUMENT(S) SERVED: Letter, Application, Subpoena Duces Tecum and Ad Testificandum, Attachment(s).

Schedule(s), Protective Order, Certificate(s) of Service

COURT/AGENCY: United States International Trade Commission, DC

Case # 337TA853

NATURE OF ACTION: Subpoena - Pertaining to TI Product

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Courier on 11/02/2012

JURISDICTION SERVED: California

APPEARANCE OR ANSWER DUE: On November 16, 2012 - Production // On December 17, 2012 at 9:00 a.m. -

Deposition

ATTORNEY(5) / SEMDER(5): Vinh Pham

Agility IP Law 149 Commonweath Drive

Menlo Park, CA 94025 650-227-4800

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 794000518156

Image 50P

Email Notification, Susie Collins s-collins@ti.com Email Notification, Phea Kennedy pkennedy@ti.com

SIGNED: C T Corporation System PER:

Nancy Flores 818 West Seventh Street ADDRESS: Los Angeles, CA 90017 213-337-4615

TELEPHONE:



Vinh Pham vpham@agilityiplaw.com

November 1, 2012

Texas Instruments Incorporated c/o CT Corporation 818 W 7<sup>th</sup> Street Los Angeles, CA 90017

> Re: Certain Wireless Consumer Electronics Devices and Components Thereof, Inv. No. 337-TA-853

To Whom It May Concern:

Enclosed please find a subpoena duces tecum and ad testificadum issued to Texas Instruments Incorporated by the U.S. International Trade Commission in the above-referenced investigation.

Please do not hesitate to contact me at (650) 227-4800 if you have any questions.

Sincerely,

Vinh Pham

Enclosure

cc: Certificate of Service

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

### Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of

Investigation No. 337-TA-853

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

### APPLICATION FOR ISSUANCE OF SUBPOENA DUCES TECUM AND AD TESTIFICANDUM

Pursuant to 19 C.F.R. § 210.32 and Ground Rule 3.6.1, Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation (collectively "TPL") hereby apply to the Administrative Law Judge for the issuance of the attached subpoena duces tecum and ad testificandum ("subpoena") on:

#### TEXAS INSTRUMENTS INCORPORATED

c/o CT Corporation 818 W. 7th St., Los Angeles, CA 90017-3401 ("TJ")

The subpoena requires TI to produce the documents, materials, and things described in Attachment A (Schedule 1) to the subpoena at the place and by the time and date as indicated in the subpoena or as mutually agreed upon. The subpoena also requires TI to provide testimony concerning the topics set forth in Attachment A (Schedule 2) to the subpoena at a deposition to take place at the place, time and date as indicated in the subpoena or as mutually agreed upon.

TPL believes that TI has substantial information relevant to this Investigation. At least four Respondents use TI microprocessors in the products that have been accused of infringement in this Investigation. Because the asserted patent, U.S. Patent 5,809,336, claims a microprocessor system, any information concerning the microprocessors in the accused products

is highly relevant to TPL's infringement case. Furthermore, the documents, materials, and things described in Attachment A (Schedule 1), and the topics set forth in Attachment A (Schedule 2) to the subpoena are narrowly tailored to address only the technical aspects relevant to the asserted patent.

TI will receive the application and subpoenas by overnight delivery, if not sooner, and all other parties to this Investigation will receive them on the next business day, at the latest, after the subpoena has issued. For the reasons set forth above, TPL respectfully requests that this Application for Issuance of a Subpoena *Duces Tecum* and *Ad Testificandum* be granted, and that the attached subpoena be issued.

TPL further respectfully requests that notice of approval of the subpoena be given to Vinh Pham, Agility IP Law, (650) 318-6342, vpham@agilityiplaw.com, who will arrange to pick up the issued subpoena.

Dated: 10/26/2012

Respectfully submitted,

James C. Otteson

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Telephone: (650) 227-4800 TPL853@agilityiplaw.com

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Counsel for Complainants Technology Properties Limited LLC and Phoenix Digital Solutions LLC

/s/ Charles T. Hoge

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Counsel for Complainant Patriot Scientific Corporation

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

### Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of

Investigation No. 337-TA-853

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

#### SUBPOENA DUCES TECUM AND AD TESTIFICANDUM

TO: TEXAS INSTRUMENTS INCORPORATED, c/o CT Corporation 818 W. 7th St., Los Angeles, CA 90017-3401

TAKE NOTICE: By authority of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation:

YOU ARE HEREBY ORDERED to produce at Agility IP Law, LLP, 149
Commonwealth Drive, Menlo Park, CA 94025, on November 16, 2012, or at such other time and place agreed upon, all of the documents and things in your possession, custody or control which are listed and described in Attachment A (Schedule 1) hereto. Such production will be for the purpose of inspection and copying, as desired.

YOU ARE HEREBY FURTHER ORDERED to present yourself for purposes of your deposition upon oral examination at Agility IP Law, LLP, 149 Commonwealth Drive, Menlo Park, CA 94025, on December 17, 2012, at 9:00 a.m. (local time), or at such other time and place agreed on, concerning the subject matter set forth in Attachment A (Schedule 2) hereto.

This deposition will be taken before a Notary Public or other person authorized to administer oaths and will continue from day-to-day until completed. The deposition may also be recorded by real-time transcription display and videotape.

If production of any document listed and described in Attachment A (Schedule 1) hereto is withheld on the basis of a claim of privilege, each withheld document shall be separately identified in a privileged document list. The privileged document list must identify each document separately, specifying for each document at least: (i) the date; (ii) author(s)/sender(s); (iii) recipient(s), including copy recipients; and (iv) general subject matter of the document. The sender(s) and recipient(s) shall be identified by position and entity (corporation or firm, etc.) with which they are employed or associated. If the sender or the recipient is an attorney or a

foreign patent agent, he or she shall be so identified. The type of privilege claimed must also be stated, together with a certification that all elements of the claimed privilege have been met and have not been waived with respect to each document.

If any of the documents or things listed and described in Attachment A (Schedule 1) or any of your testimony responsive to the subject matter set forth in Attachment A (Schedule 2) are considered "confidential business information," as that term is defined in the Protective Order attached hereto as Attachment B, such documents or things or testimony shall be so designated and subject to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt hereof. At the time of filing of any motion concerning this subpoena, two (2) courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this

1st day of November 2012.

E. James Gildea

Administrative Law Judge

United States International Trade Commission

Efames Gildea

#### ATTACHMENT A

#### **DEFINITIONS**

- 1. "TI," "YOU," "YOUR," or "YOURS" mean Texas Instruments Incorporated, its predecessors and successors, past and present parents, divisions, subsidiaries, affiliates, and related companies, and all past and present directors, officers, employees, agents, consultants, attorneys and others purporting to act on its behalf.
- 2. The term "DOCUMENT" is used in the broadest possible sense as interpreted under the Federal Rules of Civil Procedure and includes, without limitation, all originals and copies, duplicates, drafts, and recordings of any written, printed, graphic or otherwise recorded matter, however produced or reproduced, and all "writings," as defined in Federal Rule of Evidence 1001, of any nature, whether on paper, magnetic tape, electronically recorded or any other information storage means, including film and computer memory devices; and where any such items contain any marking not appearing on the original or are altered from the original, then such items shall be considered to be separate original documents.
- 3. "RELATE," "RELATING TO," "RELATED TO," or "REGARDING" mean concerning, referring to, summarizing, reflecting, constituting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, comprising, showing, commenting on, evidencing, describing or otherwise relating to the subject matter.
- 4. "TI PRODUCTS" means any or all of the following chips bearing the following model numbers: OMAP4430, OMAP3530, AIC3010B, AIC3005, and any sub-assembly on which any of the aforementioned chips can be found.
- 5. The use of the singular form shall include the plural, and the past tense shall include the present tense, and vice versa; the words "and" and "or" shall be both conjunctive and

disjunctive; the word "all" shall mean "any and all;" the word "including" shall mean "including without limitation," so as to be most inclusive.

### INSTRUCTIONS

- DOCUMENTS produced in response to these Requests for Production
  ("Requests") should be produced as they are kept in the usual course of business or should be
  organized and labeled to correspond with the categories in the Requests.
- 2. If TI contends that a portion of a DOCUMENT is subject to being withheld under a claim of privilege or immunity from production or that a portion of a DOCUMENT is nonresponsive to the Requests below, produce the entire document with any necessary redactions.
- If any DOCUMENT is withheld under a claim of privilege or immunity from production, identify that document as required by Federal Rule of Civil Procedure 26(b)(5).
- 4. These Requests are continuing, so that if after responding and producing DOCUMENTS for inspection and copying, TI acquires or locates any additional DOCUMENTS falling within the scope of any of the Requests herein, TI is to produce such additional DOCUMENTS promptly for inspection and copying.

### SCHEDULE 1

### REQUESTS FOR PRODUCTION

### Request for Production No. 1:

For each TI PRODUCT, all DOCUMENTS concerning block specifications, internal design documents for each block, datasheets, floorplans, user manuals, programming manuals, clock tree, I/O protocol specifications, service manuals, CORE manuals, die images, chip packaging information, clock circuitry diagrams, and timing diagrams.

#### Request for Production No. 2:

For each TI PRODUCT, all system and transistor level schematics for the clocking circuitry and phase-locked loops, including, but not limited to, schematics contained in the service manuals of each TI PRODUCT.

### Request for Production No. 3:

All schematic diagrams of all oscillators used in each TI PRODUCT.

### Request for Production No. 4:

All block diagrams of phase-locked loops in each TI PRODUCT, including circuit schematics for each block of the phase-locked loops.

#### Request for Production No. 5:

All manuals, user guides, white papers, technical papers, training guides, brochures, instructions for use, and specifications created by TI regarding CPU, clocking, phase-locked loops, oscillator variability, manufacturing and operation variations, microprocessor process technology, data transfer, and I/O interfaces.

### Request for Production No. 6:

For each TI PRODUCT, all specifications, user guides or user manuals, simulation methods and results, testing methods and results, block diagrams, and the circuit schematics for each block, of the I/O interfaces, including, but not limited to, XDR DRAM I/O interfaces, I/O interfaces with DRAM, Bluetooth interfaces and transceivers, and USB interfaces.

### Request for Production No. 7:

For each TI PRODUCT, all DOCUMENTS concerning the simulation procedures and corresponding results for the clocking circuitry and phase-locked loops.

### Request for Production No. 8:

For each TI PRODUCT, all DOCUMENTS concerning the testing procedures and corresponding results for the clocking circuitry and phase-locked loops.

### Request for Production No. 9:

All source code and related programming information for each TI PRODUCT.

### Request for Production No. 10:

All DOCUMENTS sufficient to show the structure and function of each TI PRODUCT.

### **SCHEDULE 2**

### TOPICS ON WHICH EXAMINATION IS REQUESTED

- 1. For each TI PRODUCT, the block specifications, and the internal design for each block.
  - 2. The clock tree, and clock circuitry in each TI PRODUCT.
- 3. The I/O protocol specifications, I/O interfaces, data transfer and chip packaging in each TI PRODUCT.
- 4. The oscillators in each TI PRODUCT, including oscillator variability, manufacturing and operation variations.
  - 5. The phase-locked loops in each TI PRODUCT.
- The simulation and testing procedures and the corresponding results for the clocking circuitry and the phase-locked loops in each TI PRODUCT.
  - 7. The structure and function of each TI PRODUCT.
  - 8. Source code and related programming information for each TI PRODUCT.
  - Documents produced in response to this subpoena.

### ATTACHMENT B

### UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

ORDER NO. 1: PROTECTIVE ORDER

(August 24, 2012)

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. § 210.5;

#### IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such

information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)).

- 2(a). Any information submitted, in pre hearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice. Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order.
- (b). The Administrative Law Judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Administrative Law Judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.
- 3. In the absence of written permission from the supplier or an order by the Commission or the Administrative Law Judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii)

technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts which are the subject of this investigation); (iv) the Commission, the Administrative Law Judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.1

- 4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i)<sup>2</sup> and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.
- 5. If the Commission or the Administrative Law Judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be

<sup>1</sup> See Commission Administrative Order 97-06 (Feb. 4, 1997).

<sup>&</sup>lt;sup>2</sup> Necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order.

considered subject to it, unless the Commission or the Administrative Law Judge finds that the information is not confidential business information as defined in paragraph 1 thereof.

- 6. Any confidential business information submitted to the Commission or the Administrative Law Judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter or translator receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.
- 7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the Administrative Law Judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

- 8. The Commission, the Administrative Law Judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the Administrative Law Judge. When such information is made part of a pleading or is offered into the evidentiary record, the data set forth in 19 C.F.R. § 201.6 must be provided except during the time that the proceeding is pending before the Administrative Law Judge. During that time, the party offering the confidential business information must, upon request, provide a statement as to the claimed basis for its confidentiality.
- 9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the Administrative Law Judge that information designated as confidential, is no longer confidential, the Commission, the Administrative Law Judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access to such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to redesignate or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the

Administrative Law Judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

- 10. If while an investigation is before the Administrative Law Judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation; such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the Administrative Law Judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the Administrative Law Judge who will rule upon the matter. The Administrative Law Judge may sua sponte question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.
- 11. No less than 10 days (or any other period of time designated by the Administrative Law Judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefore

prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the Administrative Law Judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the Administrative Law Judge. The terms of this paragraph shall be inapplicable to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

- 12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the Administrative Law Judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.
- 13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the Administrative Law Judge concerning the issue of the status of confidential business information.
- 14. Upon final termination of this investigation, each recipient of confidential business information that is subject to this order shall assemble and return to the supplier all items containing such information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business

information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be transmitted to a district court pursuant to Commission Rule 210.5(c).

- 15. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be considered a "supplier" as that term is used in the context of this order.
- 16. Each nonparty supplier shall be provided a copy of this order by the party seeking information from said supplier.
  - 17. The Secretary shall serve a copy of this order upon all parties.

Theodore R. Essex

Administrative Law Judge

### Attachment A

NUMBELOSURE AGREEMENT FOR REPORTER/STENOGRAPHER/TRANSLATOR
I,, do solemnly swear or affirm that I will not divulge
any information communicated to me in any confidential portion of the investigation or hearing
in the matter of Certain Wireless Consumer Electronics Devices and Components Thereof.
Investigation No. 337-TA-853, except as permitted in the protective order issued in this case.
will not directly or indirectly use, or allow the use of such information for any purpose other than
that directly associated with my official duties in this case.
Further, I will not by direct action, discussion, recommendation, or suggestion to any
person reveal the nature or content of any information communicated during any confidential
portion of the investigation or hearing in this case.
l also affirm that I do not hold any position or official relationship with any of the
participants in said investigation.
I am aware that the unauthorized use or conveyance of information as specified above is
a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000,
imprisonment of up to ten (10) years, or both.
Signed
Dated
Firm or affiliation

### PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER has been served by hand upon, the Commission Investigative Attorney, Matthew N. Bathon, Esq., and the following parties as indicated on August 24, 2012.

Lisa R. Barton, Acting Secretary U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436

## On Behalf of Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation:

James C. Otteson, Esq.	( ) Via Hand Delivery
AGILITY IP LAW, LLP	( ) Yia Overnight Delivery
149 Commonwealth Drive	( Via First Class Mail
Menlo Park, CA 94025	( ) Other:
On Behalf of Respondents Acer Inc., Acer America	
Corporation, Amazon.com Inc. and Novatel, Inc.:	
Eric C. Rusnak, Esq.	( ) Via Hand Delivery
K&L GATES LLP	( ) Via Overnight Delivery
1601 K Street, NW	( Via First Class Mail
Washington, DC 20006-1600	( ) Other:
On Behalf of Respondents Garmin Ltd., Garmin	
International, Inc. and Garmin USA, Inc. :	
Louis S. Mastriani, Esq.	( ) Via Hand Delivery
ADDUCI, MASTRIANI & SCHAUMBERG LLP	( ) Via Overnight Delivery
1133 Connecticut Avenue, NW, 12th Floor	( Via First Class Mail
Washington, DC 20036	( ) Other:
On Behalf of Respondent Barnes & Noble, Inc.:	
Paul F. Brinkman, Esq.	( ) Via Hand Delivery
QUINN EMANUEL URQUHART & SULLIVAN LLP	( ) Yia Overnight Delivery
1299 Pennsylvania Avenue NW, Suite 825	( Via First Class Mail
Washington, DC 20004	( ) Other:

### CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

Certificate of Service - Page 2

### On Behalf of Respondent Huawei Technologies Co., Ltd.:

	<b>44</b>
Timothy C. Bickham, Esq. STEPFOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
On Behalf of ZTE Corporation and ZTE (USA) Inc.:	
Jay H. Reiziss, Esq. BRINKS, HOFER, GILSON & LIONE 1850 K Street, NW Washington, DC 20006-2219	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Respondents:	
HTC Corporation 23 Xinghua Road Taoyuan 330, Taiwan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
HTC America 13920 SE Eastgate Way, Suite 200 Bellevue, WA 98005	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Huawei North America 5700 Tennyson Parkway, Suite 500 Plano, TX 75024	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Kyocera Corporation 6 Takeda Tobadono-cho, Fushmi-ku Kyoto 612-8501, Japan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Kyocera Communications, Inc. 9520 Towne Centre Drive San Diego, CA 92121	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
LG Electronics, Inc. LG Twin Towers, 20 Yeouido-dong Yeongdeungpo-pgu Seoul 150-721, Republic of Korea	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:

## CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

Certificate of Service - Page 3

Respondents (cont.	<b>)</b> :	
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LG Electronics U.S.A., Inc. 1000 Sylvan Avenue Englewood Cliffs, NJ 07632	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo Co., Ltd. 11-1 Kamitoba Hokotate-Cho, Minami-Ku Kyoto 601-8501, Japan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo of America, Inc. 4600 150 <sup>th</sup> Avenue, NE Redmond, WA 98052	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics Co., Ltd. Samsung Main Building 250, Taepyeongno 2-ga, Jung-gu Seoul 100-742, Republic of Korea	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics America, Inc. 105 Challenger Road Ridgefield Park, NJ 07660	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless, Inc. 13811 Wireless Way, Richmond British Columbia V6V 3A4 Canada	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless America, Inc. 2200 Faraday Avenue, Suite 150 Carlsbad, CA 92008	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:

### CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

) Other:

Certificate of Service - Page 4

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20.00		-
	KJ I	

Heather Hall ) Via Hand Delivery **LEXIS-NEXIS** ) Viz Overnight Delivery 9443 Springboro Pike Via First Class Mail Miamisburg, OH 45342 ( ) Other: Kenneth Clair ) Via Hand Delivery ) Via Overnight Delivery Via First Class Mail

THOMSON WEST 1100 13th Street, NW, Suite 200 Washington, DC 20005

## UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

Before the Honorable E. James Gildea Administrative Law Judge

In	the	Matter	of
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CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Investigation No. 337-TA-853

### CERTIFICATE OF SERVICE

- I, Ana Villanueva, hereby certify that on November 1, 2012, a copy of the foregoing document was served upon each of the following parties or their counsel in the manner indicated:
  - 1. APPLICATION FOR ISSUANCE OF SUBPOENA DUCES TECUM AND AD TESTIFICADUM
  - 2. SUBPOENA DUCES TECUM AND AD TESTIFICADUM TO TEXAS INSTRUMENTS INCORPORATED

R. Whitney Winston Investigative Attorney Office of Unfair Import Investigation U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436 Telephone: (202) 205-2221 Whitney Winston@usitc.gov Convertion Computations Patriot Selectifit: Comparation	Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)
Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 choge@knlh.com	Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)

Counsel for Respondents Aser the and Aser America	11	
Colparation		
Eric C. Rusnak		Via First Class Mail
K&L GATES LLP	1	
1601 K Street, NW		Via Hand Delivery
Washington, DC 20006-1600		Via Overnight Courier
Telephone: (202) 778-9000	⊠	Via Email (PDF copy)
Facsimile: (202) 778-9100		
eric.rusnak@klgates.com		
AcerAmazonNovatel_ITC853@klgates.com		
Commed for Respondent Ameson com, Inc.		
Eric C. Rusnak		321 Et (11 ) (-1)
K&L GATES LLP		Via First Class Mail
1601 K Street, NW		Via Hand Delivery
Washington, DC 20006-1600		Via Overnight Courier
Telephone: (202) 778-9000	×	Via Email (PDF copy)
Facsimile: (202) 778-9100	Ì	
eric.rusnak@klgates.com	ļ	
AcerAmazonNovatel_ITC853@kigates.com	<u> </u>	
Council for Respondent Durges & Noble, line.		
NSCESSOS GERGY AND SECURIOS DE SETURA ASSE (N. INTIDITA). TORRE	<u>:1</u>	<u> </u>
Paul F. Brinkman		We Piece Class No. 1
Paul F. Brinkman		Via First Class Mail
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP		Via Hand Delivery
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004		Via Hand Delivery
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 paulbrinkman@quinnemanuel.com		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 paulbrinkman@quinnemanuel.com BN-853@quinnemanuel.com		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 paulbrinkman@quinnemanuel.com		Via Hand Delivery Via Overnight Courier
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 paulbrinkman@quinnemanuel.com BN-853@quinnemanuel.com Contact for Respondents Completeliale. Cuenti, International.		Via Hand Delivery Via Overnight Courier Via Email (PDF copy)
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Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 paulbrinkman@quinnemanuel.com BN-853@quinnemanuel.com Coursel for Respondents Carpine Inde, Caralle International, Inc. and Garme USA, Inc. Louis S. Mastriani ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P. 1133 Connecticut Avenue, N.W., 12th Floor Washington, DC 20036 Telephone: (202) 467-6300		Via Hand Delivery Via Overnight Courier Via Email (PDF copy)  Via First Class Mail Via Hand Delivery Via Overnight Courier
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stephen.smith@cooley.com		
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Plano, TX 75024	×	Via Overnight Courier
		Via Email (PDF copy)
Counsel for Respondents Ryocera Corporation and Ryocera		via Eman (FDF copy)
Commendations, line		
M. Andrew Woodmansee		Via First Class Mail
MORRISON & FOERSTER LLP		Via Hand Delivery
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Telephone: (858) 720-5100	$\boxtimes$	Via Email (PDF copy)
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mawoodmansee@mofo.com		
Kyocera-TPL-ITC@mofo.com		

## CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

### CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

Alloways for Respondents Starre Wheless, the and Starre	
Windows Amerika, Inc.	
Tom M. Schaumberg ADDUCI, MASTRIANI & SCHAUMBERG, LLP 1133 Connecticut Avenue, NW, Twelfth Floor Washington, DC 20036 Telephone: (202) 467-6300 Facsimile: (202) 466-2006 schaumberg@adduci.com sierra-001@adduci.com	<ul> <li>□ Via First Class Mail</li> <li>□ Via Hand Delivery</li> <li>□ Via Overnight Courier</li> <li>⊠ Via Email (PDF copy)</li> </ul>
Counsel for Respondents ZIVs Composition and ZIVs (USA)	
Jay H. Reiziss BRINKS HOFER GILSON & LIONE 1850 K Street, NW, Suite 675 Washington, D.C. 20006-2219 Telephone: (202) 296-6940 Facsimile: (202) 296-8701 jreiziss@brinkshofer.com	<ul> <li>□ Via First Class Mail</li> <li>□ Via Hand Delivery</li> <li>□ Via Overnight Courier</li> <li>☑ Via Email (PDF copy)</li> </ul>

/s/ Ana	Villanueva
Ana Vil	lanueva

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**Extremely Urgent** 

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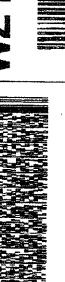
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# Exhibit B

## UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, DC

### Before The Honorable E. James Gildea Administrative Law Judge

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

### **DECLARATION OF SARAH VOLLBRECHT**

I, Sarah Vollbrecht, being of mature age and having the mental capacity to do so, hereby declare and state as follows:

- 1. The statements made in this declaration are based upon my personal knowledge and/or upon information made available to me, and upon conclusions and determinations I have reached and made in accordance therewith.
  - 2. I am an attorney licensed to practice in the State of Texas.
- 3. I am Retained Legal Counsel for Texas Instruments Incorporated ("TI"). I have overseen TI's responses to all subpoenas served in International Trade Commission Investigation No. 337-TA-853.
- 4. TI received a third-party subpoena from Complainants Technology Properties
  Limited LLC and Phoenix Digital Solutions LLC (collectively, "Complainants") on November 2,
  2012. The subpoenas requested both documents and depositions relating to certain of TI's
  OMAP chips and audio codec chips. In response to this subpoena, TI produced approximately
  42,034 pages of documents regarding TI's OMAP chips. TI produced TI-TPL-0000001 through

TI-TPL-0024628 on November 30, 2012 and TI-TPL-0024629 through TI-TPL-000042034 on December 11, 2012.

- 5. TI received a subpoena from the Nintendo Respondents on November 9, 2012. In response to this subpoena, TI produced approximately 7,649 pages of documents regarding TI's audio codec chips. TI produced TI-NIN-0000001 through TI-NIN-0007649 on December 12, 2012.
- 6. On November 14, 2012, TI announced that it was eliminating approximately 1,700 jobs worldwide in its OMAP and wireless connectivity businesses. The reductions-inforce began soon after the announcement was made.
- 7. On January 7, 2013, Complainants served deposition subpoenas in two cases pending in the Northern District of California: *HTC Corporation v. Technology Properties Ltd.*, Civil Action No. CV08-00882-PSG and *Acer, Inc. v. Technology Properties Ltd.*, Civil Action No. CV08-00877-PSG.
- 8. I spoke by phone with Michelle Breit of Agility IP Law on January 11, 2013, regarding scheduling depositions for the district court cases and this ITC Investigation. My colleague, John Patti, and I continued to speak with Ms. Breit and various other attorneys at Agility IP Law by phone and email during the month of January. John Patti and I both informed Agility IP Law that our search was greatly complicated by the significant reduction-in-force in TI's OMAP business.
- 9. Never, during phone calls and emails with attorneys from Agility IP Law, do I recall ever specifically discussing whether or not TI had someone to present for deposition regarding the audio codecs. I do not recall anyone from Agility IP Law requesting a deposition regarding the audio codecs, in particular.

10. I do not recall speaking with anyone at Agility IP Law regarding a deposition in this matter after January 2013.

11. On March 18, 2013, Philip Marsh of Agility IP Law sent an email to me and John Patti requesting that TI produce additional documents. This was the first request we had received from Complainants' counsel to supplement our document production.

I, Sarah Vollbrecht, declare, in accordance with 28 U.S.C. §1746 under penalty of perjury, on this 2nd day of May 2013, that the foregoing is true and correct.

SARAH VOLLBRECHT

# Exhibit C



Service of Process **Transmittal** 

04/22/2013

CT Log Number 522572587

Mark Patrick, VP & Asst. Gen. Csl. TO:

Texas Instruments Incorporated 13588 N. Central Expressway, MS 3999

Dallas, TX 75243

RE: **Process Served in Delaware** 

FOR: Texas Instruments Incorporated (Domestic State: DE)

### ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: In the matter of Certain Wireless Consumer Electronics Devices and Components

Thereof vs. Texas instruments incorporated

DOCUMENT(S) SERVED: Letter, Subpoena Ad Testificandum, Attachment(s), Protective Order, Certificate(s)

of Service

COURT/AGENCY: United States International Trade Commission, D.C.

Case # 337TA853

**NATURE OF ACTION:** 

Subpoena - Business records - Pertaining to each TI Product, the block specifications, and the internal designs for each block (See document for additional

records requested)

The Corporation Trust Company, Wilmington, DE ON WHOM PROCESS WAS SERVED:

DATE AND HOUR OF SERVICE: By Courier on 04/22/2013

**JURISDICTION SERVED:** Delaware

APPEARANCE OR ANSWER DUE: June 4, 2013 at 9:00 a.m.

ATTORNEY(S) / SENDER(S): James E. Gildea - Administrative Law Judge

United States International Trade Commission

Washington, D.C.

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 799586506164

Image 50P

Email Notification, Susie Collins s-collins@ti.com Email Notification, Phea Kennedy pkennedy@ti.com

SIGNED: The Corporation Trust Company

PER: Melanie McGrath 1209 Orange Street Wilmington, DE 19801 302-658-7581 ADDRESS:

TELEPHONE:



Vinh Pham vpham@agilityiplaw.com

April 19, 2013

Texas Instruments Incorporated 12500 TI Boulevard, Dallas TX 75243 c/o **The Corporation Trust Company** Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

Re: Certain Wireless Consumer Electronics Devices and Components Thereof,

Inv. No. 337-TA-853

To Whom It May Concern:

Enclosed, please find Trial Subpoena Ad Testificadum issued to Texas Instruments Incorporated by the U.S. International Trade Commission in the above referenced investigation.

Please do not hesitate to contact me at (650) 227-4800, ext. 130 if you have any questions.

Sincerely,

Vinh Pham

Enclosure

cc: Certificate of Service

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

### Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of

Investigation No. 337-TA-853

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

### TRIAL SUBPOENA AD TESTIFICANDUM TO TEXAS INSTRUMENTS INCORPORATED

TO: TEXAS INSTRUMENTS INCORPORATED, 12500 TI Boulevard, Dallas, TX 75243 c/o The Corporation Trust Company, Corporation Trust Center 1209 Orange St, Wilmington, DE 19801

TAKE NOTICE: By authority of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainants Technology Properties Limited LLC, and Phoenix Digital Solutions LLC:

YOU ARE HEREBY ORDERED to present yourself for purposes of testifying at a hearing in the above-captioned matter at the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, on June 4, 2013, at 9:00 a.m. (local time) concerning the subject matter set forth in Attachment A hereto.

This testimony will be taken under oath and will continue from day-to-day until completed. The testimony may also be recorded by real-time transcription display and videotape.

If any of your testimony responsive to the subject matter set forth in Attachment A are considered "confidential business information," as that term is defined in the Protective Order attached hereto as Attachment B, such testimony shall be so designated and subject to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt hereof. At the time of filing of any motion concerning this subpoena, two (2) courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this

19th day of April , 2013.

E. James Gildea

Administrative Law Judge

United States International Trade Commission

#### ATTACHMENT A

#### **DEFINITIONS**

- 1. "TI," "YOU," "YOUR," or "YOURS" mean Texas Instruments Incorporated, its predecessors and successors, past and present parents, divisions, subsidiaries, affiliates, and related companies, and all past and present directors, officers, employees, agents, consultants, attorneys and others purporting to act on its behalf.
- 2. "RELATE," "RELATING TO," "RELATED TO," or "REGARDING" mean concerning, referring to, summarizing, reflecting, constituting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, comprising, showing, commenting on, evidencing, describing or otherwise relating to the subject matter.
- 3. "TI PRODUCTS" means any or all of the following chips bearing the following model numbers: OMAP4430, OMAP4460, OMAP4470, OMAP3530, OMAP3611, OMAP3621, AIC3010B, AIC3005, TLV320AIC3005IRGZR, TLV320AIC3010IZQZR, TLV320AIC3010DZQZR and any sub-assembly on which any of the aforementioned chips can be found.
- 4. The use of the singular form shall include the plural, and the past tense shall include the present tense, and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" shall mean "any and all;" the word "including" shall mean "including without limitation," so as to be most inclusive.

### TOPICS ON WHICH TESTIMONY IS REQUESTED

- For each TI PRODUCT, the block specifications, and the internal design for each block.
  - 2. The clock tree, and clock circuitry in each TI PRODUCT.

- 3. The I/O protocol specifications, I/O interfaces, data transfer and chip packaging in each TI PRODUCT.
- The oscillators in each TI PRODUCT, including but not limited to, any ring oscillators, voltage controlled oscillators, and current controlled oscillators.
- 5. The variability of any ring oscillator, voltage controlled oscillator, or current controlled oscillator in each TI Product related to manufacturing variations, operating voltage or operating temperature.
  - 6. The phase-locked loops in each TI PRODUCT.
- The simulation and testing procedures and the corresponding results for the clocking circuitry and the phase-locked loops in each TI PRODUCT.
  - 8. The structure and function of each TI PRODUCT.

### ATTACHMENT B

### UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-853

ORDER NO. 1: PROTECTIVE ORDER

(August 24, 2012)

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. § 210.5;

#### IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such

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information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)).

- 2(a). Any information submitted, in pre hearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice. Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order.
- (b). The Administrative Law Judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Administrative Law Judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.
- 3. In the absence of written permission from the supplier or an order by the Commission or the Administrative Law Judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii)

technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts which are the subject of this investigation); (iv) the Commission, the Administrative Law Judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.1

- 4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i)<sup>2</sup> and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.
- 5. If the Commission or the Administrative Law Judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be

See Commission Administrative Order 97-06 (Feb. 4, 1997).

<sup>&</sup>lt;sup>2</sup> Necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order.

considered subject to it, unless the Commission or the Administrative Law Judge finds that the information is not confidential business information as defined in paragraph 1 thereof.

- 6. Any confidential business information submitted to the Commission or the Administrative Law Judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter or translator receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.
- 7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the Administrative Law Judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

- 8. The Commission, the Administrative Law Judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the Administrative Law Judge. When such information is made part of a pleading or is offered into the evidentiary record, the data set forth in 19 C.F.R. § 201.6 must be provided except during the time that the proceeding is pending before the Administrative Law Judge. During that time, the party offering the confidential business information must, upon request, provide a statement as to the claimed basis for its confidentiality.
- 9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the Administrative Law Judge that information designated as confidential, is no longer confidential, the Commission, the Administrative Law Judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access to such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to redesignate or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the

Administrative Law Judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

- 10. If while an investigation is before the Administrative Law Judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation; such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the Administrative Law Judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the Administrative Law Judge who will rule upon the matter. The Administrative Law Judge may sua sponte question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.
- 11. No less than 10 days (or any other period of time designated by the Administrative Law Judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefore

prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the Administrative Law Judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the Administrative Law Judge. The terms of this paragraph shall be inapplicable to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

- 12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the Administrative Law Judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.
- 13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the Administrative Law Judge concerning the issue of the status of confidential business information.
- 14. Upon final termination of this investigation, each recipient of confidential business information that is subject to this order shall assemble and return to the supplier all items containing such information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business

information and certify to the supplier (or his counsel) that such destruction has taken place, This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be transmitted to a district court pursuant to Commission Rule 210.5(c).

- 15. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be considered a "supplier" as that term is used in the context of this order.
- 16. Each nonparty supplier shall be provided a copy of this order by the party seeking information from said supplier.
  - 17. The Secretary shall serve a copy of this order upon all parties.

Administrative Law Judge

### Attachment A

NONDISCLOSURE AGREEMENT FOR REPORTER/STENOGRAPHER/TRANSLATOR
I,, do solemnly swear or affirm that I will not divulge
any information communicated to me in any confidential portion of the investigation or hearing
in the matter of Certain Wireless Consumer Electronics Devices and Components Thereof
Investigation No. 337-TA-853, except as permitted in the protective order issued in this case.
will not directly or indirectly use, or allow the use of such information for any purpose other than
that directly associated with my official duties in this case.
Further, I will not by direct action, discussion, recommendation, or suggestion to any
person reveal the nature or content of any information communicated during any confidential
portion of the investigation or hearing in this case.
I also affirm that I do not hold any position or official relationship with any of the
participants in said investigation.
I am aware that the unauthorized use or conveyance of information as specified above is
a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000,
imprisonment of up to ten (10) years, or both.
Signed
Dated
Firm or affiliation

### PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER has been served by hand upon, the Commission Investigative Attorney, Matthew N. Bathon, Esq., and the following parties as indicated on August 24, 2012.

Lisa R. Batton, Acting Secretary U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436

On Behalf of Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation:

James C. Otteson, Esq. AGILITY IP LAW, LLP 149 Commonwealth Drive Menlo Park, CA 94025	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
On Behalf of Respondents Acer Inc., Acer America	
Corporation, Amazon.com Inc. and Novatel, Inc.:	
Eric C. Rusnak, Esq.  K&L GATES LLP  1601 K Street, NW  Washington, DC 20006-1600	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
On Behalf of Respondents Garmin Ltd., Garmin	
International, Inc. and Garmin USA, Inc. :	
Louis S. Mastriani, Esq.  ADDUCI, MASTRIANI & SCHAUMBERG LLP 1133 Connecticut Avenue, NW, 12th Floor Washington, DC 20036	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
On Behalf of Respondent Barnes & Noble, Inc.:	
Paul F. Brinkman, Esq.  QUINN EMANUEL URQUHART & SULLIVAN LLP 1299 Pennsylvania Avenue NW, Suite 825  Washington, DC 20004	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:

Inv. No. 337-TA-853

Certificate of Service - Page 2

On Behalf of Respondent Huawei Technologies Co	Ltd.:
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	<del></del>
Timothy C. Bickham, Esq.  STEPTOE & JOHNSON LLP  1330 Connecticut Avenue, N.W.  Washington, DC 20036	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
On Behalf of ZTE Corporation and ZTE (USA) Inc.;	
Jay H. Reiziss, Esq.  BRINKS, HOFER, GILSON & LIONE 1850 K Street, NW Washington, DC 20006-2219  Respondents:	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
HTC Corporation 23 Xinghua Road Taoyuan 330, Taiwan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
HTC America 13920 SE Eastgate Way, Suite 200 Bellevue, WA 98005	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Huawei North America 5700 Tennyson Parkway, Suite 500 Plano, TX 75024	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Kyocera Corporation 6 Takeda Tobadono-cho, Fushmi-ku Kyoto 612-8501, Japan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Kyocera Communications, Inc. 9520 Towne Centre Drive San Diego, CA 92121	( ) Via Hand Delivery ( ) Via Overnight Delivery ( V) Via First Class Mail ( ) Other:
LG Electronics, Inc. LG Twin Towers, 20 Yeouido-dong Yeongdeungpo-pgu Secul 150-721, Republic of Korea	( ) Via Hand Delivery ( ) Via Ovemight Delivery ( ) Via First Class Mail ( ) Other:

Inv. No. 337-TA-853

( ) Other:

Certificate of Service - Page 3

Res	pon	dents	(cont.):	:

LG Electronics U.S.A., Inc. 1000 Sylvan Avenue Englewood Cliffs, NJ 07632	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo Co., Ltd. 11-1 Kamitoba Hokotate-Cho, Minami-Ku Kyoto 601-8501, Japan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo of America, Inc. 4600 150 <sup>th</sup> Avenue, NE Redmond, WA 98052	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics Co., Ltd. Samsung Main Building 250, Taepyeongno 2-ga, Jung-gu Seoul 100-742, Republic of Korea	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics America, Inc. 105 Challenger Road Ridgefield Park, NJ 07660	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless, Inc. 13811 Wireless Way, Richmond British Columbia V6V 3A4 Canada	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless America, Inc. 2200 Faraday Avenue, Suite 150 Carlsbad, CA 92008	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail

Inv. No. 337-TA-853

Certificate of Service - Page 4

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Heather Hall LEXIS-NEXIS 9443 Springboro Pike Miamisburg, OH 45342

Kenneth Clair THOMSON WEST 1100 13th Street, NW, Suite 200 Washington, DC 20005

(((	) Via Hand Delivery ) Via Overnight Delivery Via First Class Mail ) Other:
(	) Via Hand Delivery
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(	Via First Class Mail
(	) Other:

# UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

Investigation No. 337-TA-853

#### **CERTIFICATE OF SERVICE**

I, Ana Villanueva, hereby certify that on April 19, 2013, a copy of the foregoing documents were served upon each of the following parties or their counsel in the manner indicated:

- 1. APPLICATION FOR ISSUANCE OF TRIAL SUBPOENA AD TESTIFICADUM
- 2. TRIAL SUBPOENA AD TESTIFICADUM TO TEXAS INSTRUMENTS INCORPORATED

Office of Unfair Import Investigation	
R. Whitney Winston Investigative Attorney Office of Unfair Import Investigation U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436 Telephone: (202) 205-2221 Whitney.Winston@usitc.gov	Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)
Counsel for Complainant Patriot Scientific Corporation	
Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 choge@knlh.com	Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)



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Counsel for Respondents Acer Inc. and Acer America Corporation		
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Counsel for Respondent Amazon.com, Inc. Eric C. Rusnak	<del> </del>	
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Counsel for Respondent Barnes & Noble, Inc. Paul F. Brinkman	<u> </u>	
		Via First Class Mail
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Attorneys for Respondents Samsung Electronics Co., Ltd. and		
Samsung Electronics America, Inc.	Ì	
Aaron Wainscoat		Via First Class Mail
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Facsimile: (202) 296-8701		
Brinks-853-ZTE@brinkshofer.com		

/s/ Ana Villanueva	
Ana Villanueva	

From: (650) 227-4800 Sherri Mills Agility IP Law, LLP 149 Commonwealth Dr.

MENLO PARK, CA 94025

Origin ID: HGTA



SHIP TO: (650) 227-4800 X 114

The CT Company

Texas Instruments Inc Corporation Trust Center 1209 Orange Street **WILMINGTON, DE 19801** 

J13111302120326

**BILL SENDER** 

Ref# Invoice #

Ship Date: 19APR13

CAD: 101848225/INET3370

Delivery Address Bar Code

ActiVgt: 1.0 LB

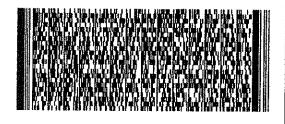
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# Exhibit D



Vinh Pham vpham@agilitviplaw.com

April 19, 2013

Baher Haroun 906 Pampa Drive Allen, TX 75013-1191

> Re: Certain Wireless Consumer Electronics Devices and Components Thereof, Inv. No. 337-TA-853

To Whom It May Concern:

Enclosed, please find Trial Subpoena Ad Testificadum issued to Baher Haroun by the U.S. International Trade Commission in the above referenced investigation.

Please do not hesitate to contact me at (650) 227-4800, ext. 130 if you have any questions.

Sincerely,

Vinh Pham

Enclosure

cc: Certificate of Service

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of	
CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF	Investigation No. 337-TA-853

#### **CERTIFICATE OF SERVICE**

I, Ana Villanueva, hereby certify that on April 19, 2013, a copy of the foregoing documents were served upon each of the following parties or their counsel in the manner indicated:

- 1. APPLICATION FOR ISSUANCE OF TRIAL SUBPOENA AD TESTIFICADUM
- 2. TRIAL SUBPOENA AD TESTIFICADUM TO BAHER HAROUN

Office of Unfair Import Investigation	90.
R. Whitney Winston Investigative Attorney Office of Unfair Import Investigation U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436 Telephone: (202) 205-2221 Whitney.Winston@usitc.gov	<ul> <li>□ Via First Class Mail</li> <li>□ Via Hand Delivery</li> <li>□ Via Overnight Courier</li> <li>☑ Via Email (PDF copy)</li> </ul>
Counsel for Complainant Patriot Scientific Corporation	
Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 choge@knlh.com	<ul> <li>□ Via First Class Mail</li> <li>□ Via Hand Delivery</li> <li>□ Via Overnight Courier</li> <li>☑ Via Email (PDF copy)</li> </ul>

Counsel for Respondents Acer Inc. and Acer America		
Corporation		
Eric C. Rusnak		Via First Class Mail
K&L GATES LLP		Via Hand Delivery
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Facsimile: (202) 778-9100		
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Counsel for Respondent Amazon.com, Inc.		
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Washington, DC 20006-1600	$\boxtimes$	Via Email (PDF copy)
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Paul F. Brinkman		Via First Class Mail
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Fax: (202) 538-8100		
BN-853@quinnemanuel.com		
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Inc. and Garmin USA, Inc.		
Louis S. Mastriani		Via First Class Mail
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Garmin-853@adduci.com		
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America		
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Counsel for Respondent Huassei Technologies Co., Ltd.,	d	
Huawet Device Co., Ltd., Huawet Device USA Inc., and		
Futurewei Technologies, Inc.		
Timothy C. Bickham	To	Via First Class Mail
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Facsimile: (202) 429-3902		
Huawei853@steptoe.com		
Counsel for Respondents Kyocera Corporation and Kyocera		
Communications, the	\$6 KG	
M. Andrew Woodmansee		Via First Class Mail
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America Inc.		
Stephen R. Smith		Via First Class Mail
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Attorneys for Kespondents Samsung Electronics Co., Etd. and Sunstaing Electronics America, The		
Aaron Wainscoat DLA PIPER LLP 2000 University Avenue East Palo Alto, CA 94303-2214 Telephone: (650) 833-2442 Facsimile: (650) 687-1135 853-DLA-Samsung-Team@dlapiper.com		Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)
Counsel for Respondents ZIE Corporation and ZIE (USA) Inc.		
Jay H. Reiziss BRINKS HOFER GILSON & LIONE 1775 Pennsylvania Avenue, NW, Suite 900 Washington, D.C. 20006 Telephone: (202) 296-6940 Facsimile: (202) 296-8701 Brinks-853-ZTE@brinkshofer.com		Via First Class Mail Via Hand Delivery Via Overnight Courier Via Email (PDF copy)

/s/ Ana Villanueva	
Ana Villanueva	

### UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

#### Before the Honorable E. James Gildea Administrative Law Judge

In the Matter of

Investigation No. 337-TA-853

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

#### TRIAL SUBPOENA AD TESTIFICANDUM TO BAHER HAROUN

TO: Baher Haroun 906 Pampa Dr Allen, TX 75013-1191

TAKE NOTICE: By authority of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainants Technology Properties Limited LLC, and Phoenix Digital Solutions LLC:

YOU ARE HEREBY ORDERED to present yourself for purposes of testifying at a hearing in the above-captioned matter at the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, on June 4, 2013, at 9:00 a.m. (local time) concerning the subject matter set forth in Attachment A hereto.

This testimony will be taken under oath and will continue from day-to-day until completed. The testimony may also be recorded by real-time transcription display and videotape.

If any of your testimony responsive to the subject matter set forth in Attachment A are considered "confidential business information," as that term is defined in the Protective Order attached hereto as Attachment B, such testimony shall be so designated and subject to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt hereof. At the time of filing of any motion concerning this subpoena, two (2) courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has bereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this

15 day of April 2013.

E. James Gildea

E. James Gildea

Administrative Law Judge

United States International Trade Commission

#### ATTACHMENT A

#### **DEFINITIONS**

- 1. "TI" means Texas Instruments Incorporated, its predecessors and successors, past and present parents, divisions, subsidiaries, affiliates, and related companies, and all past and present directors, officers, employees, agents, consultants, attorneys and others purporting to act on its behalf.
- 2. "RELATE," "RELATING TO," "RELATED TO," or "REGARDING" mean concerning, referring to, summarizing, reflecting, constituting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, comprising, showing, commenting on, evidencing, describing or otherwise relating to the subject matter.
- 3. "TI PRODUCTS" means any or all of the following chips bearing the following model numbers: OMAP4430, OMAP4460, OMAP4470, OMAP3530, OMAP3611, OMAP3621, AIC3010B, AIC3005, TLV320AIC3005IRGZR, TLV320AIC3010IZQZR, TLV320AIC3010DZQZR and any sub-assembly on which any of the aforementioned chips can be found.
- 4. The use of the singular form shall include the plural, and the past tense shall include the present tense, and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" shall mean "any and all;" the word "including" shall mean "including without limitation," so as to be most inclusive.

#### TOPICS ON WHICH TESTIMONY IS REQUESTED

- 1. For each TI PRODUCT, the block specifications, and the internal design for each block.
  - 2. The clock tree, and clock circuitry in each TI PRODUCT.

- 3. The I/O protocol specifications, I/O interfaces, data transfer and chip packaging in each TI PRODUCT.
- The oscillators in each TI PRODUCT, including but not limited to, any ring oscillators, voltage controlled oscillators, and current controlled oscillators.
- The variability of any ring oscillator, voltage controlled oscillator, or current controlled oscillator in each TI Product related to manufacturing variations, operating voltage or operating temperature.
  - The phase-locked loops in each TI PRODUCT.
- 7. The simulation and testing procedures and the corresponding results for the clocking circuitry and the phase-locked loops in each TI PRODUCT.
  - 8. The structure and function of each TI PRODUCT.

#### ATTACHMENT B

#### UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF Inv. No. 337-TA-853

ORDER NO. 1: PROTECTIVE ORDER

(August 24, 2012)

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. § 210.5;

#### IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such

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information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)).

- 2(a). Any information submitted, in pre hearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice. Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order.
- (b). The Administrative Law Judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Administrative Law Judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.
- 3. In the absence of written permission from the supplier or an order by the Commission or the Administrative Law Judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii)

technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts which are the subject of this investigation); (iv) the Commission, the Administrative Law Judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.1

- 4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i)<sup>2</sup> and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.
- 5. If the Commission or the Administrative Law Judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be

<sup>&</sup>lt;sup>1</sup> See Commission Administrative Order 97-06 (Feb. 4, 1997).

<sup>&</sup>lt;sup>2</sup> Necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order.

considered subject to it, unless the Commission or the Administrative Law Judge finds that the information is not confidential business information as defined in paragraph 1 thereof.

- 6. Any confidential business information submitted to the Commission or the Administrative Law Judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter or translator receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.
- 7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the Administrative Law Judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

- 8. The Commission, the Administrative Law Judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the Administrative Law Judge. When such information is made part of a pleading or is offered into the evidentiary record, the data set forth in 19 C.F.R. § 201.6 must be provided except during the time that the proceeding is pending before the Administrative Law Judge. During that time, the party offering the confidential business information must, upon request, provide a statement as to the claimed basis for its confidentiality.
- 9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the Administrative Law Judge that information designated as confidential, is no longer confidential, the Commission, the Administrative Law Judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access to such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to redesignate or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the

Administrative Law Judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

- 10. If while an investigation is before the Administrative Law Judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation; such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the Administrative Law Judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the Administrative Law Judge who will rule upon the matter. The Administrative Law Judge may sua sponte question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.
- 11. No less than 10 days (or any other period of time designated by the Administrative Law Judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefore

prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the Administrative Law Judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the Administrative Law Judge. The terms of this paragraph shall be inapplicable to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

- 12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the Administrative Law Judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.
- 13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the Administrative Law Judge concerning the issue of the status of confidential business information.
- 14. Upon final termination of this investigation, each recipient of confidential business information that is subject to this order shall assemble and return to the supplier all items containing such information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business

information and certify to the supplier (or his counsel) that such destruction has taken place.

This paragraph shall not apply to the Commission, including its investigative attorney, and the

Administrative Law Judge, which shall retain such material pursuant to statutory requirements

and for other recordkeeping purposes, but may destroy those additional copies in its possession

which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be

transmitted to a district court pursuant to Commission Rule 210.5(e).

15. If any confidential business information which is supplied in accordance with

paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be

considered a "supplier" as that term is used in the context of this order.

16. Each nonparty supplier shall be provided a copy of this order by the party seeking

information from said supplier.

17. The Secretary shall serve a copy of this order upon all parties.

Theodore R. Essex

Administrative Law Judge

#### Attachment A

NONDISCLOSURE AGREEMENT FOR REPORTER/STENOGRAPHER/TRANSLATOR
I,, do solemnly swear or affirm that I will not divulge
any information communicated to me in any confidential portion of the investigation or hearing
in the matter of Certain Wireless Consumer Electronics Devices and Components Thereof
Investigation No. 337-TA-853, except as permitted in the protective order issued in this case.
will not directly or indirectly use, or allow the use of such information for any purpose other than
that directly associated with my official duties in this case.
Further, I will not by direct action, discussion, recommendation, or suggestion to any
person reveal the nature or content of any information communicated during any confidential
portion of the investigation or hearing in this case.
I also affirm that I do not hold any position or official relationship with any of the
participants in said investigation.
I am aware that the unauthorized use or conveyance of information as specified above is
a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000
imprisonment of up to ten (10) years, or both.
Signed
Dated
Firm or affiliation

#### PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER has been served by hand upon, the Commission Investigative Attorney, Matthew N. Bathon, Esq., and the following parties as indicated on August 24, 2012.

Lisa R. Barton, Acting Secretary U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436

# On Behalf of Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation:

James C. Otteson, Esq.	( ) Via Hand Delivery
AGILITY IP LAW, LLP	( ) Yia Overnight Delivery
149 Commonwealth Drive	( Via First Class Mail
Menlo Park, CA 94025	( ) Other:
On Behalf of Respondents Acer Inc., Acer America	
Corporation, Amazon.com Inc. and Novatel, Inc.:	
Eric C. Rusnak, Esq.	( ) Via Hand Delivery
K&L GATES LLP	( ) Yia Overnight Delivery
1601 K Street, NW	( Via First Class Mail
Washington, DC 20006-1600	( ) Other:
On Behalf of Respondents Garmin Ltd., Garmin	
International, Inc. and Garmin USA, Inc. :	
Louis S. Mastriani, Esq.	( ) Via Hand Delivery
adduci, mastriani & schaumberg llp	( ) Via Overnight Delivery
1133 Connecticut Avenue, NW, 12th Floor	( Via First Class Mail
Washington, DC 20036	( ) Other:
On Behalf of Respondent Barnes & Noble, Inc.:	
Paul F. Brinkman, Esq.	( ) Via Hand Delivery
QUINN EMANUEL URQUHART & SULLIVAN LLP	( ) Yia Overnight Delivery
1299 Pennsylvania Avenue NW, Suite 825	( Via First Class Mail
Washington, DC 20004	( ) Other:
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Inv. No. 337-TA-853

Certificate of Service - Page 2

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Timothy C. Bickham, Esq.	( ) Via Hand Delivery
STEPTOE & JOHNSON LLP	( ) Via Overnight Delivery
1330 Connecticut Avenue, N.W.	( Via First Class Mail
Washington, DC 20036	( ) Other:
On Behalf of ZTE Corporation and ZTE (USA) Inc.:	
Jay H. Reiziss, Esq.	( ) Via Hand Delivery
BRINKS, HOFER, GILSON & LIONE	( ) Via Overnight Delivery
1850 K. Street, NW	( ) Via First Class Mail
Washington, DC 20006-2219	( ) Other:
Respondents:	
HTC Corporation	( ) Via Hand Delivery
23 Xinghua Road	( ) Via Overnight Delivery
Taoyuan 330, Taiwan	( Via First Class Mail
•	( ) Other:
HTC America	( ) Via Hand Delivery
13920 SE Eastgate Way, Suite 200	( ) Vja Overnight Delivery
Bellevue, WA 98005	( ) Via First Class Mail
·	( ) Other:
Huawei North America	( ) Via Hand Delivery
5700 Tennyson Parkway, Suite 500	( ) Via Overnight Delivery
Plano, TX 75024	( Via First Class Mail
•	( ) Other:
Kyocera Corporation	( ) Via Hand Delivery
6 Takeda Tobadono-cho, Fushmi-ku	( ) Yie Overnight Delivery
Kyoto 612-8501, Japan	( Via First Class Mail
•	( ) Other:
Kyocera Communications, Inc.	( ) Via Hand Delivery
9520 Towne Centre Drive	( ) Yia Overnight Delivery
San Diego, CA 92121	( Via First Class Mail
	( ) Other:
LG Electronics, Inc.	( ) Via Hand Delivery
LG Twin Towers, 20 Yeouido-dong	( ) Yat Overnight Delivery
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LG Electronics U.S.A., Inc. 1000 Sylvan Avenue Englewood Cliffs, NJ 07632	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo Co., Ltd. 11-1 Kamitoba Hokotate-Cho, Minami-Ku Kyoto 601-8501, Japan	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Nintendo of America, Inc. 4600 150 <sup>th</sup> Avenue, NE Redmond, WA 98052	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics Co., Ltd. Samsung Main Building 250, Taepyeongno 2-ga, Jung-gu Seoul 100-742, Republic of Korea	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Samsung Electronics America, Inc. 105 Challenger Road Ridgefield Park, NJ 07660	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless, Inc. 13811 Wireless Way, Richmond British Columbia V6V 3A4 Canada	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:
Sierra Wireless America, Inc. 2200 Faraday Avenue, Suite 150 Carlsbad, CA 92008	( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail ( ) Other:

Inv. No. 337-TA-853

( ) Other:

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Heather Hall ) Via Hand Delivery **LEXIS-NEXIS** ( ) Via Overnight Delivery ( ) Via First Class Mail 9443 Springboro Pike Miamisburg, OH 45342 ( ) Other: Kenneth Clair ( ) Via Hand Delivery ( ) Via Overnight Delivery ( ) Via First Class Mail THOMSON WEST

1100 13th Street, NW, Suite 200 Washington, DC 20005