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12 Attorneys for Plaintiffs
13 ACER INC., ACER AMERICA
CORPORATION and GATEWAY, INC.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 ACER INC., ACER AMERICA
CORPORATION, AND GATEWAY, INC.,

19 Plaintiffs,

20 vs.

21 TECHNOLOGY PROPERTIES LIMITED,
22 PATRIOT SCIENTIFIC CORPORATION,
AND ALLIACENSE LIMITED,

23 Defendants.

Case No.: 5:08-CV-00877 JF

**SUPPLEMENTAL DECLARATION OF
JAS S. DHILLON IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO
AMEND PLAINTIFFS' FIRST
AMENDED COMPLAINT TO JOIN
CHARLES H. MOORE**

Judge: The Hon. Jeremy Fogel
Date: March 18, 2011
Time: 10:00 a.m.
Courtroom: 3, 5th Floor

Complaint Filed: February 8, 2008
Trial Date: None

26
27 **AND RELATED CROSS ACTIONS.**

1 I, Jas S. Dhillon, declare:

2 1. I am an attorney licensed to practice law before all courts in the State of California,
3 and the United States District Court for the Northern District of California. I am an attorney at K&L
4 Gates LLP in its San Francisco, California office, and I, along with other attorneys at K&L Gates
5 LLP, am attorney of record for Acer Inc., Acer America Corporation and Gateway, Inc. (collectively
6 “Plaintiffs” or “Acer”). I submit this supplemental declaration in support of Acer’s Motion for Leave
7 to Amend Plaintiffs’ First Amended Complaint to Join Charles H. Moore (“Motion for Leave to
8 Amend”).

9 2. I have personal knowledge of the matters set forth herein except as to those matters set
10 forth on information and belief, and as to those I am informed and believe to be true and could and
11 would competently testify thereto.

12 3. Pursuant to Northern District of California Local Rule 10-1, Plaintiffs attach their
13 proposed Second Amended Complaint in support of their Motion for Leave to Amend.

14 4. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs’ proposed Second
15 Amended Complaint Against Defendants Technology Properties Limited, Patriot Scientific
16 Corporation, Alliacense Limited, and Charles H. Moore.

17 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing
18 is true and correct.

19 Executed on February 17, 2011, at San Francisco, California.
20

21
22 By: /s/ Jas S. Dhillon
23 Jas S. Dhillon
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EXHIBIT A

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 ACER INC., ACER AMERICA
 CORPORATION, AND GATEWAY, INC.,

19 Plaintiffs,

20 vs.

21 TECHNOLOGY PROPERTIES LIMITED,
 22 PATRIOT SCIENTIFIC CORPORATION,
 23 ALLIACENSE LIMITED, AND CHARLES
 H. MOORE,

24 Defendants.

25 AND RELATED CROSS ACTIONS.
 26
 27
 28

Case No.: 5:08-CV-00877 JF

**SECOND AMENDED COMPLAINT FOR
 DECLARATORY JUDGMENT**

[Assigned to Honorable Jeremy Fogel]

Complaint Filed: February 8, 2008

1 Plaintiffs Acer, Inc. (“Acer”), Acer America Corporation (“Acer America”) and Gateway,
2 Inc. (“Gateway”) (collectively “Plaintiffs”), by and through their attorneys, allege as follows:

3 1. This is a civil action arising under the Patent Laws of the United States, 35 U.S.C.
4 §§101, et seq., seeking a declaratory judgment that no valid and enforceable claim of United States
5 Patent Numbers 5,809,336 (“336 patent”), 5,440,749 (“749 patent”), 6,598,148 (“148 patent”),
6 and/or 5,530,890 (“890 patent”) (collectively the “patents-in-suit”) are infringed by Plaintiffs.

7 **PARTIES**

8 2. Plaintiff Acer is a Taiwan corporation with its principal place of business in Taipei,
9 Taiwan, R.O.C.

10 3. Plaintiff Acer America is a California corporation with its principal place of business
11 in San Jose, California.

12 4. Plaintiff Gateway is a Delaware corporation with its principal place of business in
13 Irvine, California. Gateway is a wholly-owned subsidiary of Acer.

14 5. Defendant Technology Properties Ltd. (“TPL”) is, on information and belief, a
15 California corporation with its principal place of business in Cupertino, California. On information
16 and belief, TPL is a co-owner of the patents-in-suit.

17 6. Defendant Patriot Scientific Corporation (“Patriot”) is, on information and belief,
18 incorporated under the laws of the State of Delaware and maintains its principal place of business in
19 Carlsbad, California. On information and belief, Patriot is a co-owner of the patents-in-suit.

20 7. Defendant Alliacense Ltd. (“Alliacense”) is, on information and belief, a California
21 corporation with its principal place of business in Cupertino, California. On information and belief,
22 Alliacense is responsible for negotiating possible licenses to the patents-in-suit with third parties, on
23 behalf of TPL.

24 8. Defendant Charles H. Moore (“Moore”) is a named inventor of the patents-in-suit.
25 Moore has filed a lawsuit in Santa Clara County Superior Court against TPL and Alliacense claiming
26 ownership rights and interests in the patents-in-suit. Upon information and belief, Moore is a Nevada
27 resident doing business in California.

1 **JURISDICTION AND VENUE**

2 9. The Plaintiffs file this complaint against TPL, Patriot, Alliacense and Moore
3 (collectively "Defendants") pursuant to the patent laws of the United States, Title 35 of the United
4 States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory
5 judgment in the federal courts of the United States, 28 U.S.C. §§ 2201 and 2202.

6 10. This Court has subject matter jurisdiction over this action, which arises under the
7 patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

8 11. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b)
9 because: on information and belief, TPL, Patriot and Alliacense are corporations subject to personal
10 jurisdiction in this District; on information and belief, Moore is subject to personal jurisdiction in this
11 District; and on information and belief, TPL and Alliacense maintain their principal place of business
12 in this District.

13 **INTRADISTRICT ASSIGNMENT**

14 12. This action is properly filed in the San Jose Division of the Northern District of
15 California because Defendants reside, or do business, in this district.

16 **EXISTENCE OF AN ACTUAL CONTROVERSY**

17 13. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.
18 §§ 2201 and 2202.

19 14. Beginning in or about 2006, and continuing thereafter, Alliacense has repeatedly
20 demanded that Plaintiffs enter into a royalty-bearing license for the patents-in-suit. Alliacense has
21 claimed that certain products of Plaintiffs are infringed by one or more claims of the patents-in-suit,
22 and has told Plaintiffs that if they do not take a license to the patents-in-suit, Plaintiffs may be subject
23 to substantial liabilities. Alliacense's allegations have included claim charts purporting to describe
24 how certain products of Plaintiffs allegedly infringe one or more claims of the patents-in-suit.

25 15. Alliacense and Plaintiffs met numerous times during the fourteen months preceding
26 the filing of the complaint in this matter to discuss a possible license, with the most recent meeting
27 having taken place on January 20, 2008. Throughout this period, Alliacense consistently threatened
28 Plaintiffs and demanded that they take a license to the patents-in-suit. For example, during the

1 January 20, 2008 meeting, the Senior Vice President of Licensing of Alliacense, Mr. Mark Davis,
2 told representatives of Plaintiffs that they would be risking a patent infringement lawsuit if Plaintiffs
3 failed to enter into a licensing agreement.

4 16. Although Plaintiffs and Alliacense have repeatedly discussed the possibility of a
5 license to the patents-in-suit, the parties have been unable to reach any agreement. On February 6,
6 2008, Mr. Davis sent Plaintiffs an email expressing frustration with the status of the negotiations and
7 the parties' inability to work out an agreement. Mr. Davis concluded his e-mail by inquiring "if Acer
8 still has an interest in resolving this matter outside of the court and if so, how [it] would like to
9 proceed."

10 17. Based upon the above facts, there is an actual and justiciable controversy within the
11 jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

12 **FIRST CLAIM**

13 **DECLARATORY JUDGMENT REGARDING THE '336 PATENT**

14 18. The Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1
15 through 17 and incorporate them by reference.

16 19. No valid and enforceable claim of the '336 patent is infringed by the Plaintiffs.

17 **SECOND CLAIM**

18 **DECLARATORY JUDGMENT REGARDING THE '749 PATENT**

19 20. The Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1
20 through 19 and incorporate them by reference.

21 21. No valid and enforceable claim of the '749 patent is infringed by the Plaintiffs.

22 **THIRD CLAIM**

23 **DECLARATORY JUDGMENT REGARDING THE '148 PATENT**

24 22. The Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1
25 through 21 and incorporate them by reference.

26 23. No valid and enforceable claim of the '148 patent is infringed by the Plaintiffs.

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FOURTH CLAIM

DECLARATORY JUDGMENT REGARDING THE '890 PATENT

24. The Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 23 and incorporate them by reference.

25. No valid and enforceable claim of the '890 patent is infringed by the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follows:

1. Declaring that no valid and enforceable claim of the patents-in-suit is infringed by the Plaintiffs;

2. Declaring that Defendants and each of their officers, employees, agents, alter egos, attorneys, and any persons in active concert or participation with them be restrained and enjoined from further prosecuting or instituting any action against the Plaintiffs claiming that the patents-in-suit are valid, enforceable, or infringed, or from representing that the products or services of the Plaintiffs infringe the patents-in-suit;

3. A judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding the Plaintiffs their attorneys' fees and costs in connection with this case;

4. Awarding the Plaintiffs such other and further relief as the Court deems just and proper.

Dated: February 17, 2011

K&L GATES LLP

By: /s/ Timothy P. Walker
Timothy P. Walker (SBN 105001)

Attorneys for Plaintiffs
ACER, INC., ACER AMERICA
CORPORATION and GATEWAY, INC.