

JAMES C. OTTESON, State Bar No. 157781
jim@agilityiplaw.com
THOMAS T. CARMACK, State Bar No. 229324
tom@agilityiplaw.com
PHILIP W. MARSH, State Bar No. 276383
phil@agilityiplaw.com
DAVID LANSKY, State Bar No. 199952
AGILITY IP LAW, LLP
149 Commonwealth Drive
Menlo Park, CA 94025
Telephone: (650) 227-4800
Facsimile: (650) 318-3483
Attorneys for Defendants
TECHNOLOGY PROPERTIES LIMITED and
ALLIACENSE LIMITED

CHARLES T. HOGE, State Bar No. 110696
choge@knlh.com
KIRBY NOONAN LANCE & HOGE
35 Tenth Avenue
San Diego, CA 92101
Telephone: (619) 231-8666
Facsimile: (619) 231-9593
Attorneys for Defendant
PATRIOT SCIENTIFIC CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ACER, INC., ACER AMERICA)
CORPORATION and GATEWAY, INC.,)
Plaintiffs,)
v.)
TECHNOLOGY PROPERTIES LIMITED,)
PATRIOT SCIENTIFIC CORPORATION,)
and ALLIACENSE LIMITED,)
Defendants.)

HTC CORPORATION and HTC)
AMERICA, INC.,)
Plaintiffs,)
v.)
TECHNOLOGY PROPERTIES LIMITED,)
PATRIOT SCIENTIFIC CORPORATION)
and ALLIACENSE LIMITED,)
Defendants.)

AND ALL RELATED COUNTERCLAIMS)

Case No. 5:08-cv-00877 PSG

**DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
DOCUMENTS FILED IN SUPPORT OF
THEIR OPPOSITION TO
PLAINTIFFS' MOTIONS TO
EXCLUDE THE OPINIONS AND
TESTIMONY OF DR. STEPHEN
PROWSE**

Judge: Hon. Paul S. Grewal
Date: August 29, 2013
Time: 2:00 p.m.

Case No. 5:08-cv-00882 PSG

PLEASE TAKE NOTICE that pursuant to Civil Local Rule 79-5(c) and (d), Defendants Technology Properties Limited, Patriot Scientific Corporation, and Alliacense Limited (collectively, “Defendants”) move the Court for an order to file under seal Exhibits 5, 6, and 21 to the Declaration of David Lansky in Support Defendants’ Opposition to Plaintiffs’ Motions to Exclude the Opinions and Testimony of Dr. Stephen Prowse and Exhibit A to the Declaration of Mac Leckrone In Support of Defendants’ Opposition to Plaintiffs’ Motions *in Limine* (the “Confidential Documents”). Defendants will conditionally lodge under seal the Confidential Documents.

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). Further, although “courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents,” the Ninth Circuit has made clear that “access to judicial records is not absolute.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). Thus, a party seeking to seal a document or information filed in connection with a dispositive motion may overcome the presumption of public access by meeting the “compelling reasons” standard articulated by the Ninth Circuit. *Id.*; *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003); *Medtronic Vascular, Inc. v. Abbott Cardiovascular Sys., Inc.*, 614 F. Supp. 2d 1006, 1035-36 (N.D. Cal. 2009), amended on other grounds, No. C 06-1066 PJH, 2009 WL 1764749 (N.D. Cal. June 22, 2009). Specifically, a party may demonstrate the need for under seal treatment by “articulat[ing] compelling reasons supported by specific factual findings . . . that outweigh the general history of access and the public policies favoring disclosure.” *Kamakana*, 447 F.3d at 1178-79 (internal citations omitted).

The Confidential Documents describe and quote material that this Court has already sealed. Specifically, several exhibits containing similar confidential business information pertaining to TPL and its licensees were ordered sealed on August 22, 2013 (Dkt. No. 510).

1 Because and for the same reasons the Court already sealed information substantially
2 similar to that contained in the Confidential Documents, and for the reasons contained in the
3 Declaration of David Lansky In Support of Defendants' Administrative Motion to File Under Seal
4 Documents Filed In Support of Their Opposition to Plaintiffs' Motions to Exclude the Opinions
5 and Testimony of Dr. Stephen Prowse, filed contemporaneously herewith, Defendants' motion
6 should be granted.

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9 Dated: August 22, 2013

Respectfully Submitted,
AGILITY IP LAW, LLP

11 By: /s/ David Lansky

12 James C. Otteson, State Bar No. 157781
jim@agilityiplaw.com
13 Thomas T. Carmack, State Bar No. 229324
tom@agilityiplaw.com
14 Philip W. Marsh, State Bar No. 276383
phil@agilityiplaw.com
15 David Lansky, State Bar No. 199952
dlansky@agilityiplaw.com

16 Attorneys for Defendants
17 TECHNOLOGY PROPERTIES LIMITED
18 and ALLIACENSE LIMITED

19
20 KIRBY NOONAN LACE & HOGE

21 By: /s/ Charles T. Hoge

22 Charles T. Hoge, State Bar No. 110696
choge@knlh.com

23 Attorneys for Defendant
24 PATRIOT SCIENTIFIC CORPORATION
25
26
27

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dlansky@agilityiplaw.com
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149 Commonwealth Drive
Menlo Park, CA 94025
Telephone: (650) 227-4800
Facsimile: (650) 318-3483

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ACER, INC., ACER AMERICA
CORPORATION and GATEWAY, INC.,

Plaintiffs,

v.

TECHNOLOGY PROPERTIES
LIMITED, PATRIOT SCIENTIFIC
CORPORATION, and ALLIACENSE
LIMITED,

Defendants.

Case No. 5:08-cv-00877 PSG

**DECLARATION OF DAVID LANSKY IN
SUPPORT OF DEFENDANTS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL DOCUMENTS FILED IN
SUPPORT OF THEIR OPPOSITION TO
PLAINTIFFS' MOTIONS TO EXCLUDE
THE OPINIONS AND TESTIMONY OF
DR. STEPHEN PROWSE**

Date: Thursday, August 29, 2013
Time: 2:00 p.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewal

1 HTC CORPORATION, HTC AMERICA,
2 INC.,

3 Plaintiffs,

4 v.

5 TECHNOLOGY PROPERTIES
6 LIMITED, PATRIOT SCIENTIFIC
7 CORPORATION, and ALLIACENSE
8 LIMITED,

9 Defendants.

Case No. 5:08-cv-00882 PSG

10 I, David L. Lansky, declare the following:

11 1. I am an attorney licensed to practice in the State of California with the firm Agility
12 IP Law, LLP, counsel for Defendants Technology Properties Limited and Alliacense Limited in
13 this action (collectively, "TPL"). I have personal knowledge of the facts set forth below and, if
14 called upon to do so, could and would testify competently thereto.

15 2. TPL requests that certain documents and exhibits referenced in Defendants'
16 Administrative Motion to File Under Seal Documents Filed In Support of Their Opposition to
17 Plaintiffs' Motions to Exclude the Opinions and Testimony of Dr. Stephen Prowse (the "Motion
18 to Seal"), filed contemporaneously herewith, be filed under seal. Pursuant to Civil Local Rule
19 79-5(d), I submit this Declaration in support of the Motion to Seal.

20 3. Exhibit 5 to the Declaration of David Lansky in Support Defendants' Opposition
21 to Plaintiffs' Motions to Exclude the Opinions and Testimony of Dr. Stephen Prowse (the
22 "Lansky Decl.") is a true and correct copy of excerpts from the Rebuttal Expert Report of
23 Christopher J. Bokhart. The document is designated as confidential and contains the confidential
24 business information of TPL and its licensees, especially with respect to the information
25 contained on pages 30 and 31, and at Tab 4.

26 4. Exhibit 6 to the Lansky Decl. is a true and correct copy of excerpts from the
27 Expert Rebuttal Report of Dr. Gregory K. Leonard. The document is designated as confidential

1 and contains the confidential business information of TPL and its licensees, especially with
 2 respect to the information contained on pages 31, 32, 37, and Exhibits 2 and 2A.

3 5. Exhibit 21 to the Lansky Decl. is a true and correct copy of redacted excerpts from
 4 a license agreement between TPL and Asustek, Bates-numbered TPL0806880-900. The
 5 document is designated as confidential and contains the confidential business information of TPL
 6 and its licensees, especially with respect to the financial information contained on the page Bates-
 7 numbered TPL0806898.

8 6. Exhibit A to the Declaration of Mac Leckrone In Support of Defendants'
 9 Opposition to Plaintiffs' Motions *in Limine* is a true and correct copy of a document Bates
 10 numbered TPL-NDH2257602 , entitled "The MMP Licenses Summary." The exhibit is
 11 designated confidential and is a list of licensees to the MMP patent portfolio, each licensee's total
 12 relevant revenue, the license fees paid, and other confidential business information of TPL and its
 13 licensees.

14 7. The confidentiality interests of TPL and its licensees overcome the right of public
 15 access to the record, as a substantial probability exists that TPL's and its licensees' overriding
 16 confidentiality interest will be prejudiced if the record is not sealed. Further, the proposed sealing
 17 is narrowly tailored, and no less restrictive means exist to achieve this overriding interest.

18 I declare under penalty of perjury under the laws of the United States of America that the
 19 foregoing is true and correct. Executed this 22nd day of August 2013, at Menlo Park, California.

20
 21 /s/ David Lansky
 22 David Lansky
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 24
 25
 26

JAMES C. OTTESON, State Bar No. 157781
jim@agilityiplaw.com
THOMAS T. CARMACK, State Bar No. 229324
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DAVID LANSKY, State Bar No. 199952
dlansky@agilityiplaw.com
AGILITY IP LAW, LLP
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Telephone: (650) 227-4800
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Case No. 5:08-cv-00877 PSG

**[PROPOSED] ORDER REGARDING
DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
DOCUMENTS FILED IN SUPPORT OF
THEIR OPPOSITION TO
PLAINTIFFS' MOTIONS TO
EXCLUDE THE OPINIONS AND
TESTIMONY OF DR. STEPHEN
PROWSE**

Case No. 5:08-cv-00882 PSG

1 Having reviewed Defendants' Administrative Motion to File Under Seal Documents Filed
2 In Support of Their Opposition to Plaintiffs' Motions to Exclude the Opinions and Testimony of
3 Dr. Stephen Prowse, and all related facts and circumstances, and good cause appearing therefor, IT
4 IS HEREBY ORDERED THAT the Exhibits 5, 6, and 21 to the Declaration of David Lansky in
5 Support Defendants' Opposition to Plaintiffs' Motions to Exclude the Opinions and Testimony of
6 Dr. Stephen Prowse and Exhibit A to the Declaration of Mac Leckrone In Support of Defendants'
7 Opposition to Plaintiffs' Motions *in Limine* should be filed under seal.

8 IT IS HEREBY ORDERED THAT Defendants' Administrative Motion to File Under Seal
9 Documents Filed In Support of Their Opposition to Plaintiffs' Motions to Exclude the Opinions
10 and Testimony of Dr. Stephen Prowse is GRANTED and that Exhibits 5, 6, and 21 to the
11 Declaration of David Lansky in Support Defendants' Opposition to Plaintiffs' Motions to Exclude
12 the Opinions and Testimony of Dr. Stephen Prowse and Exhibit A to the Declaration of Mac
13 Leckrone In Support of Defendants' Opposition to Plaintiffs' Motions *in Limine* be filed under
14 seal by the Clerk of the Court in conformity with Local Rule 79-5(f).

15 IT IS SO ORDERED.

16
17 Dated: _____, 2013

18 _____
19 Hon. Paul S. Grewal
20 United States Magistrate Judge
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