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PATRIOT SCIENTIFIC CORPORATION

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 ACER, INC., ACER AMERICA)
CORPORATION and GATEWAY, INC.,)
17 Plaintiffs,)
18 v.)
19 TECHNOLOGY PROPERTIES LIMITED,)
PATRIOT SCIENTIFIC CORPORATION,)
20 and ALLIACENSE LIMITED,)
21 Defendants.)

Case No. 5:08-cv-00877 PSG

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE UNDER SEAL
DEFENDANTS' CONFIDENTIAL
EMERGENCY MOTION TO MODIFY
CASE SCHEDULE DUE TO ACER'S
DISCOVERY ABUSES,
DECLARATIONS SUBMITTED IN
SUPPORT THEREOF, AND CERTAIN
EXHIBITS ATTACHED TO THE
DECLARATIONS**

22 HTC CORPORATION and HTC)
AMERICA, INC.,)
23 Plaintiffs,)
24 v.)
25 TECHNOLOGY PROPERTIES LIMITED,)
26 PATRIOT SCIENTIFIC CORPORATION)
and ALLIACENSE LIMITED,)
27 Defendants.)
28

Judge: Hon. Paul S. Grewal

Case No. 5:08-cv-00882 PSG

1 Pursuant to Civil Local Rules 7-11(a) and 79-5(d), Defendants Technology Properties Ltd.,
 2 Patriot Scientific Corporation, and Alliacense Ltd. (collectively, “TPL”) move for administrative
 3 relief to file under seal: (1) Defendants’ Confidential Emergency Motion to Modify Case Schedule
 4 Due to Acer’s Discovery Abuses and Memorandum of Points and Authorities; (2) the Confidential
 5 Declaration of James C. Otteson In Support of TPL’s Emergency Motion to Modify Case
 6 Schedule Due to Acer’s Discovery Abuses (“Otteson Decl.”); (3) the Confidential Declaration of
 7 Philip W. Marsh In Support of TPL’s Emergency Motion to Modify Case Schedule Due to Acer’s
 8 Discovery Abuses (“Marsh Decl.”); (4) the Confidential Declaration of Thomas T. Carmack In
 9 Support of TPL’s Emergency Motion to Modify Case Schedule Due to Acer’s Discovery Abuses
 10 (“Carmack Decl.”); (5) the Confidential Declaration of John Downing In Support of TPL’s
 11 Emergency Motion to Modify Case Schedule Due to Acer’s Discovery Abuses (“Downing
 12 Decl.”); and (6) certain exhibits to the Otteson, Marsh and Carmack Declarations (“Exhibits”),
 13 specifically:

| <u>Declaration</u> | <u>Exh.</u> | <u>Description</u> |
|--------------------|-------------|--|
| Otteson | C | Email correspondence between TPL’s current and former counsel, and Acer’s counsel regarding Acer’s document production |
| Otteson | D | Acer’s counsel J. Dhillon’s email to Tom Carmack at 8:22 p.m. on Sunday, February 3, 2013 regarding Acer’s productions in the instant case and in the ITC case, attaching a chart of Acer product names |
| Otteson | E | Email from J. Otteson to Acer’s counsel, H. Davis regarding Acer’s failure to produce schematics |
| Otteson | F | Email from H. Davis to J. Otteson regarding, <i>inter alia</i> , the repository of its technical documents |
| Marsh | A | Series of email communications between P. Marsh and J. Dhillon, including: an email dated January 19, 2013 regarding Acer’s representations concerning possession, custody and control of certain documents; and a responsive email dated January 22, 2013 |
| Carmack | A | Email communication date January 25, 2013 from T. Carmack to J. Dhillon requesting documents |
| Carmack | B | Email communication from T. Carmack to J. Dhillon regarding |

| | | | |
|---|---------|---|--|
| 1 | | deficiencies of Acer's production, dated February 1, 2013 | |
| 2 | Carmack | C | Email communication from T. Carmack to J. Dhillon regarding comparison between documents produced in the instant case and those produced in the ITC action, dated February 1, 2013 |
| 3 | | | |
| 4 | Carmack | D | Email communication from J. Dhillon to T. Carmack regarding documents produced in the instant case, dated February 1, 2013 |
| 5 | | | |

6 (collectively, the "Requested Sealed Documents").

7 The Requested Sealed Documents and the Exhibits contain information that Acer has
8 asserted constitutes confidential information required to be filed under seal, pursuant to the
9 Protective Order entered into between the parties to this litigation. Generally, the Requested
10 Sealed Documents and Exhibits contain information relating to documents produced by Acer
11 including schematics, drawings, and other documents identifying Acer's internal designations
12 concerning the products at issue in this patent infringement case and in the case pending before
13 the ITC. In addition, the Requested Sealed Documents and Exhibits contain information
14 regarding Acer's internal business information such as information regarding manufacturing of
15 its products, the source of its technical documents, identification of its technical document
16 repository, and detailed information concerning Acer's technical documents such as schematics
17 and diagrams that Acer produced in discovery in this case and in the case pending before the
18 ITC. The Requested Sealed Documents and Exhibits also set forth details of conversations
19 between counsel for the parties concerning details of Acer's search for and production of
20 technical documents (including documents and information Acer designated as confidential),
21 detailed information about the respects in which Acer's production is deficient, and Acer's
22 failure to provide an explanation for its deficient production.

23 The Court should seal the documents for which Defendants seek protection because they
24 contain confidential information. Because the public's interest in non-dispositive motions is
25 relatively low, a party seeking to seal a document attached to a non-dispositive motion need only
26 demonstrate "good cause." *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010);
27 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The Court can
28 seal court documents when they contain "confidential . . . development . . . or commercial

1 information.” *Kamakana*, 447 F.3d at 1179–80 (finding “good cause” to seal documents
 2 containing material protected by Fed. R. Civ. Proc. 26(c)(1)(G) (protecting trade secrets and
 3 “other confidential . . . development . . . or commercial information”)).

4 Although the information in the Requested Sealed Documents was designated by Acer as
 5 confidential information required to be filed under seal pursuant to the parties’ Protective Order in
 6 this matter, Defendants rely on this information to support their Emergency Motion to Modify
 7 Case Schedule Due to Acer’s Discovery Abuses. The parties’ confidentiality interest therefore
 8 overcomes the right of public access to the record, as a substantial probability exists that the
 9 parties’ overriding confidentiality interest will be prejudiced if the record is not sealed.
 10 Furthermore, the proposed sealing is narrowly tailored and no less restrictive means exist to
 11 achieve this overriding interest, because it seeks sealing of only the Requested Documents that are
 12 the subject of this motion.

13 The present motion is accompanied by: (a) the attached Declaration of James C. Otteson in
 14 Support of the instant Administrative Motion for Leave to File Under Seal, and (b) a [Proposed]
 15 Order. Pursuant to Local Civil Rule 79-5 (b) and (d), Defendants therefore lodge the Requested
 16 Sealed Documents with this Court, and respectfully request leave to file the aforementioned
 17 documents under seal.

18 Dated: February 5, 2013

Respectfully submitted,

AGILITY IP LAW, LLP

By: /s/ James C. Otteson
 James C. Otteson

Attorneys for Defendants
 TECHNOLOGY PROPERTIES LIMITED
 and ALLIACENSE LIMITED

KIRBY NOONAN LANCE & HOGE

By: /s/ Charles T. Hoge
 Charles T. Hoge

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15 NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

16 ACER, INC., ACER AMERICA)
CORPORATION and GATEWAY, INC.,)
17)
Plaintiffs,)
18)
v.)
19)
TECHNOLOGY PROPERTIES LIMITED,)
20 PATRIOT SCIENTIFIC CORPORATION,)
and ALLIACENSE LIMITED,)
21)
Defendants.)

Case No. 5:08-cv-00877 PSG

DECLARATION OF JAMES C. OTTESON IN SUPPORT OF TPL'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE UNDER SEAL DEFENDANTS' EMERGENCY MOTION TO MODIFY CASE SCHEDULE DUE TO ACER'S DISCOVERY ABUSES, DECLARATIONS IN SUPPORT THEREOF, AND CERTAIN EXHIBITS THERETO

22)
23 HTC CORPORATION and HTC)
AMERICA, INC.,)
24)
Plaintiffs,)
25)
v.)
26 TECHNOLOGY PROPERTIES LIMITED,)
et al.)
27)
Defendants.)

Judge: Hon. Paul S. Grewal

Case No. 5:08-cv-00882 PSG

1 I, James C. Otteson, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and am a partner
3 with the firm Agility IP Law, LLP, counsel for Defendants Technology Properties Limited
4 (“TPL”) and Alliacense Limited in this action. I have personal knowledge of the facts set forth
5 below and, if called upon to do so, could and would testify competently thereto.

6 2. TPL requests leave to file the following documents under seal (“the Requested
7 Sealed Documents”):

- 8 a. Defendants’ Confidential Emergency Motion to Modify Case Schedule Due to
9 Acer’s Discovery Abuses and Memorandum of Points and Authorities;
- 10 b. the Confidential Declaration of James C. Otteson In Support of TPL’s Emergency
11 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses and Exhibits C
12 – F thereto;
- 13 c. Confidential Declaration of Philip W. Marsh In Support of TPL’s Emergency
14 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses and Exhibit A
15 thereto;
- 16 d. Confidential Declaration of Thomas T. Carmack In Support of TPL’s Emergency
17 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses and Exhibits
18 A-D thereto; and
- 19 e. Confidential Declaration of John Downing In Support of TPL’s Emergency
20 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses.

21 3. Generally, the Requested Sealed Documents and Exhibits contain information
22 relating to documents produced by Acer including schematics, drawings, and other documents
23 identifying Acer’s internal designations concerning the products at issue in this patent
24 infringement case and in the case pending before the ITC. In addition, the Requested Sealed
25 Documents and Exhibits contain information regarding Acer’s internal business information such
26 as information regarding manufacturing of its products, the source of its technical documents,
27 identification of its technical document repository, and detailed information concerning Acer’s

1 technical documents such as schematics and diagrams that Acer produced in discovery in this
2 case and in the case pending before the ITC. The Requested Sealed Documents and Exhibits
3 also set forth details of conversations between counsel for the parties concerning details of
4 Acer's search for and production of technical documents (including documents and information
5 Acer designated as confidential), detailed information about the respects in which Acer's
6 production is deficient, and Acer's failure to provide an explanation for its deficient production

7 4. The information in the Requested Sealed Documents is asserted by Acer to
8 contain confidential information required to be filed under seal pursuant to the parties' Protective
9 Order in this action. TPL relies on this information to support its Confidential Emergency
10 Motion to Modify Case Schedule Due to Acer's Discovery Abuses. The parties' confidentiality
11 interest therefore overcomes the right of public access to the record, as a substantial probability
12 exists that the parties' overriding confidentiality interest will be prejudiced if the record is not
13 sealed. Further, the proposed sealing is narrowly tailored and no less restrictive means exist to
14 achieve this overriding interest.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct. Executed this 5th day of February 2013, at Menlo Park, California.

17
18 /s/ James C. Otteson
19 James C. Otteson
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19 TECHNOLOGY PROPERTIES LIMITED,)
PATRIOT SCIENTIFIC CORPORATION,)
20 and ALLIACENSE LIMITED,)
21 Defendants.)

Case Nos. 5:08-cv-00877 PSG
**[PROPOSED] ORDER GRANTING
DEFENDANTS' ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
UNDER SEAL DEFENDANTS'
EMERGENCY MOTION TO MODIFY
CASE SCHEDULE DUE TO ACER'S
DISCOVERY ABUSES,
DECLARATIONS IN SUPPORT
THEREOF, AND CERTAIN EXHIBITS
THERE TO**

22 HTC CORPORATION and HTC)
AMERICA, INC.,)
23 Plaintiffs,)
24 v.)
25 TECHNOLOGY PROPERTIES LIMITED,)
26 PATRIOT SCIENTIFIC CORPORATION)
and ALLIACENSE LIMITED,)
27 Defendants.)
28

Judge: Hon. Paul S. Grewal
Case No. 3:08-cv-00882 PSG

1 Now before the Court is the motion of Defendants Technology Properties Ltd., Patriot
2 Scientific Corporation, and Alliacense Ltd. (collectively, “TPL”) for administrative relief to file
3 under seal: (1) Defendants’ Confidential Emergency Motion to Modify Case Schedule Due to
4 Acer’s Discovery Abuses and Memorandum of Points and Authorities; (2) the Confidential
5 Declaration of James C. Otteson In Support of TPL’s Emergency Motion to Modify Case
6 Schedule Due to Acer’s Discovery Abuses (“Otteson Decl.”); (3) the Confidential Declaration of
7 Philip W. Marsh In Support of TPL’s Emergency Motion to Modify Case Schedule Due to
8 Acer’s Discovery Abuses (“Marsh Decl.”); (4) the Confidential Declaration of Thomas T.
9 Carmack In Support of TPL’s Emergency Motion to Modify Case Schedule Due to Acer’s
10 Discovery Abuses (“Carmack Decl.”); (5) the Confidential Declaration of John Downing In
11 Support of TPL’s Emergency Motion to Modify Case Schedule Due to Acer’s Discovery Abuses
12 (“Downing Decl.”); and (6) certain exhibits to the Otteson, Marsh and Carmack Declarations
13 (“Exhibits”) (collectively, the “Requested Sealed Documents”).

14 Upon consideration of the motion and the supporting declaration of James C. Otteson
15 filed therewith, the Court finds there to be good cause for granting TPL’s request to file the
16 following documents under seal:

- 17 1. Defendants’ Confidential Emergency Motion to Modify Case Schedule Due to
18 Acer’s Discovery Abuses and Memorandum of Points and Authorities;
- 19 2. the Confidential Declaration of James C. Otteson In Support of TPL’s Emergency
20 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses (“Otteson Decl.”);
- 21 3. the Confidential Declaration of Philip W. Marsh In Support of TPL’s Emergency
22 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses (“Marsh Decl.”);
- 23 4. the Confidential Declaration of Thomas T. Carmack In Support of TPL’s
24 Emergency Motion to Modify Case Schedule Due to Acer’s Discovery Abuses (“Carmack
25 Decl.”);
- 26 5. the Confidential Declaration of John Downing In Support of TPL’s Emergency
27 Motion to Modify Case Schedule Due to Acer’s Discovery Abuses (“Downing Decl.”);

28

1 6. Certain Exhibits (see below) to the aforementioned Declarations of James C.
2 Otteson, Philip W. Marsh and Thomas T. Carmack:

| <u>Declaration</u> | <u>Exh.</u> | <u>Description</u> |
|--------------------|-------------|---|
| Otteson | C | Email correspondence between TPL's current and former counsel, and Acer's counsel regarding Acer's document production |
| Otteson | D | Acer's counsel J. Dhillon's email to Tom Carmack at 8:22 p.m. on Sunday, February 3, 2013 regarding Acer's productions in the instant case and in the ITC case, attaching a chart of Acer product names |
| Otteson | E | Email from J. Otteson to Acer's counsel, H. Davis regarding Acer's failure to produce schematics |
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| Marsh | A | Series of email communications between P. Marsh and J. Dhillon, including: an email dated January 19, 2013 regarding Acer's representations concerning possession, custody and control of certain documents; and a responsive email dated January, 2013 |
| Carmack | A | Email communication date January 25, 2013 from T. Carmack to J. Dhillon requesting documents |
| Carmack | B | Email communication from T. Carmack to J. Dhillon regarding deficiencies of Acer's production, dated February 1, 2013 |
| Carmack | C | Email communication from T. Carmack to J. Dhillon regarding comparison between documents produced in the instant case and those produced in the ITC action, dated February 1, 2013 |
| Carmack | D | Email communication from J. Dhillon to T. Carmack regarding documents produced in the instant case, dated February 1, 2013 |

22 GOOD CAUSE having been shown, the Court also finds that:

- 23 1. The parties possess overriding confidentiality interests that overcome the right of
24 public access to the Requested Sealed Documents;
- 25 2. The parties' overriding confidentiality interests support sealing the record;
- 26 3. A substantial probability exists that the parties' overriding confidentiality interests
27 will be prejudiced if the record is not sealed;
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- 4. The proposed sealing is narrowly tailored; and
- 5. No less restrictive means exist to achieve this overriding interest.

IT IS THEREFORE ORDERED that TPL's Administrative Motion for Leave to File Under Seal Defendants' Emergency Motion to Modify Case Schedule Due to Acer's Discovery Abuses, Declarations In Support Thereof, and Certain Exhibits Thereto is GRANTED.

IT IS SO ORDERED.

Dated: February ____, 2013

United States Magistrate Judge