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PATRIOT SCIENTIFIC CORPORATION
13

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

17 ACER, INC., ACER AMERICA)
CORPORATION and GATEWAY, INC.,)
18)
Plaintiffs,)
19)
v.)
20)
TECHNOLOGY PROPERTIES LIMITED,)
21 PATRIOT SCIENTIFIC CORPORATION,)
and ALLIACENSE LIMITED,)
22)
Defendants.)
23)

Case No. 5:08-cv-00877 PSG

**DEFENDANTS' OMNIBUS
OPPOSITION TO PLAINTIFFS ACER,
INC., ACER AMERICA
CORPORATION, AND GATEWAY,
INC.'S MOTION TO COMPEL
DEFENDANTS TO PRODUCE A
30(B)(6) WITNESS FOR CERTAIN
TOPICS AND MOTION FOR ORDER
SHORTENING TIME ON PLAINTIFFS'
MOTION TO COMPEL**

Judge: Hon. Paul S. Grewal
Date: March 12, 2013
Time: 10:00 a.m.
Courtroom: 4, 5th Floor

Complaint Filed: February 8, 2008
Trial Date: June 24, 2013

1 Between approximately 11 pm and Midnight on February 4, 2013, Acer filed the present
2 motion seeking the following relief:

3 Accordingly, the Court should compel Defendants to comply with these requests
4 without further delay on their part. Conversely, *if Defendants do not produce a*
5 *witness, the Court should require them to forego their lost profits and lost sales*
6 *damages claims.*

7 Mot. at 7 (emphasis added). The next morning at the deposition of Defendant TPL's CFO,
8 counsel for TPL and Alliacense confirmed on the record that Defendants will not seek damages
9 based on lost profits or lost sales. Thus, Acer's motion is moot.

10 Had Acer met and conferred in good faith—as required by F.R. Civ. P. 37 and Civil L.R.
11 37(a)(1)—rather than rushing to the Court, its motion would not have been necessary. Counsel
12 for TPL did not immediately respond to Acer's emails regarding the 30(b)(6) deposition topics at
13 issue because it was occupied with addressing Acer's discovery deficiencies (as described in
14 Defendants' emergency motion to modify the case schedule) and with preparing for the
15 deposition of Acer's technical 30(b)(6) witness, which took place during the day Acer filed its
16 motion.¹ Had Acer simply raised this issue during the many hours in which TPL's and Acer's
17 counsel were together in person for the deposition of Acer's witness, the present motion could
18 have been avoided.

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25 ¹ Defendants proceeded with the deposition of Acer's technical witness even
26 though Acer did not produce schematics related to the accused products in this case until the next
27 day, February 5, 2013 because Acer refused to make its witness available at any other time or to
28 agree to any modification of the case schedule.

1 Because Acer's request for deposition testimony relating to lost profits damages is moot,
2 its motion to compel (dkt. # 394) and motion to shorten time (dkt. # 396) should each be denied
3 in its entirety.

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Dated: February 6, 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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Case No. 5:08-cv-00877 PSG
**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS TO PRODUCE A
30(B)(6) WITNESS FOR CERTAIN
TOPICS AND PLAINTIFFS' MOTION
FOR ORDER SHORTENING TIME ON
MOTION TO COMPEL**

1 The Court having considered Plaintiffs' Motion for an Order Shortening Time to Hear
2 Motion to Compel Defendants to Produce a 30(b)(6) Witness for Certain Topics and Defendants'
3 Opposition thereto,

4 IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Order Shortening Time is
5 DENIED.

6 In addition, the Court having considered the Plaintiffs' Motion to Compel Defendants to
7 Produce a 30(b)(6) Witness for Certain Topics and Defendants' Opposition thereto,

8 IT IS HEREBY ORDERED THAT the Plaintiffs' Motion to Compel is DENIED as moot.

9 **IT IS SO ORDERED.**

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Dated: February ___, 2013

United States Magistrate Judge