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 23 CORPORATION and GATEWAY, INC.

24 UNITED STATES DISTRICT COURT  
 25 NORTHERN DISTRICT OF CALIFORNIA

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

Case No. 5:08-cv-00877 PSG

28 Plaintiffs,

vs.

**PLAINTIFFS' ADMINISTRATIVE  
 REQUEST TO FILE UNDER SEAL  
 PLAINTIFFS' CONFIDENTIAL MARCH  
 14, 2013 LETTER RESPONSE TO  
 DEFENDANTS' UNSOLICITED MARCH  
 13, 2013 LETTER AND EXHIBITS**

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

Defendants.

Judge: The Honorable Paul S. Grewal

1 Pursuant to Civil Local Rules 7-11 and 79-5(d) and Section 10 of the Stipulated Protective  
2 Order entered in this Action (Dkt. No. 142), Plaintiffs Acer, Inc., Acer America Corporation, and  
3 Gateway, Inc. (collectively, “Plaintiffs” or “Acer”) hereby request that the Court permit them to file  
4 under seal: Plaintiffs’ Letter to Judge Grewal dated March 14, 2013 in response to Defendants’  
5 unsolicited letter to Judge Grewal dated March 13, 2013 and exhibits to that letter.

6 Plaintiffs are seeking leave to file this material under seal because the letter cites to deposition  
7 transcripts, Acer schematics, and TPL’s infringement contentions that Plaintiffs, Defendants and/or  
8 third parties have designated as “Confidential” under the Stipulated Protective Order (Dkt. No. 142).  
9 Without concurring with or conceding the appropriateness of the aforementioned designation,  
10 Plaintiffs are filing these designated materials in a manner that is narrowly tailored to protect them,  
11 while minimizing the infringement of the public’s right of access to documents filed with the Court.

12 As with Defendants’ recent requests, the Court should seal the requested documents because  
13 they contain confidential information. Because this does not concern a motion, let alone a dispositive  
14 one, the public’s interest in the material is low. Thus, Plaintiffs only need to demonstrate “good  
15 cause” for sealing the documents. *See e.g. Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir.  
16 2010). The Court can seal court documents when they contain “confidential . . . development . . . or  
17 commercial information.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-80 (9th  
18 Cir. 2006).

19 The present motion is accompanied by: (1) the attached Declaration of Harold H. Davis in  
20 Support of the instant Administrative Motion for Leave to File Under Seal, and (2) a [Proposed]  
21 Order. Pursuant to Local Civil Rule 79-5 (b) and (d), Plaintiffs therefore lodge the Requested Sealed  
22 Document with this Court and respectfully request leave to file the aforementioned documents under  
23 seal.

24 K&L GATES LLP

25 Dated: March 14, 2013

By: /s/ Harold H. Davis  
Harold H. Davis

27 Attorney for Plaintiffs, ACER, INC., ACER  
28 AMERICA CORPORATION and  
GATEWAY, INC.

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

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

20 Plaintiffs,

21 vs.

22 TECHNOLOGY PROPERTIES LIMITED,  
 23 PATRIOT SCIENTIFIC CORPORATION, and  
 24 ALLIACENSE LIMITED,

25 Defendants.

Case No. 5:08-cv-00877 PSG

**DECLARATION OF HAROLD H. DAVIS  
 IN SUPPORT OF PLAINTIFFS'  
 ADMINISTRATIVE REQUEST TO FILE  
 EXHIBITS UNDER SEAL**

Judge: The Honorable Paul S. Grewal

1 I, HAROLD H. DAVIS, 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 a partner 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 “Acer” or “Plaintiffs”). I submit this declaration in support of Plaintiff’s Administrative Request to  
7 File Plaintiffs’ March 14 Letter and Exhibits Under Seal.

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

11 3. Acer requests leave to file the following documents under seal (“Requested Sealed  
12 Documents”):

- 13 a. Letter dated March 14, 2013 to Judge Grewal in response to Defendants’ unsolicited  
14 letter dated March 13, 2013 to Judge Grewal.
- 15 b. Infringement Contentions for the ‘336 and ‘890 patents TPL has labeled  
16 “Confidential”
- 17 c. Deposition excerpts from two, third-party LSI corporate representatives; and
- 18 d. Deposition excerpts from Acer’s witness, Jonas Chen.

19 4. The Requested Sealed Documents to this declaration have been designated by  
20 Plaintiffs, Defendants, and/or third parties as “Confidential” under the Stipulated Protective Order.  
21 See Dkt. No. 142. Generally, the Requested Sealed Documents contain deposition testimony  
22 concerning the operation of accused products, schematics for an exemplary product, TPL’s  
23 infringement contentions it has contended are “confidential,” and/or Acer’s internal business  
24 information. Acer relies upon this information in its March 14, 2013 letter to respond to inaccurate  
25 statements and mischaracterizations contained in TPL’s unsolicited, *ex parte* March 14, 2013 letter to  
26 Judge Grewal. Accordingly, without concurring with or conceding the appropriateness of the  
27 aforementioned designation, Acer is seeking to file with the Court sealed copies Acer’s response as  
28 well as exhibits cited therein.

1           5.       The information in the Requested Sealed Documents is asserted by Defendants  
2 Plaintiffs, and/or third parties to contain confidential information required to be filed under seal  
3 pursuant to the parties' Protective Order in this action. Acer relies upon this information to respond  
4 to statements in TPL's *ex parte* communication with the Court. The parties' confidentiality interest  
5 therefore overcomes the right of public access to the record, as a substantial probability exists that the  
6 parties' overriding confidentiality interest will be prejudiced if the record is not sealed. The  
7 documents concern the inner workings of Plaintiffs' accused products. Further, the proposed sealing  
8 is narrowly tailored and no less restrictive means exist to achieve this overriding interest.

9  
10           I declare under penalty of perjury, under the laws of the United States of America that the  
11 foregoing is true and correct, and that this declaration was executed in San Francisco, California.

12  
13 Dated: March 14, 2013

By: /s/ Harold H. Davis  
Harold H. Davis

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21 TECHNOLOGY PROPERTIES LIMITED,  
22 PATRIOT SCIENTIFIC CORPORATION, and  
23 ALLIACENSE LIMITED,

24 Defendants.

Case No. 5:08-cv-00877 PSG

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' ADMINISTRATIVE  
REQUEST TO FILE LETTER IN  
RESPONSE TO DEFENDANTS'  
UNSOLICITED, EX PARTE MARCH 14,  
2013 LETTER AND EXHIBITS UNDER  
SEAL**

Judge: The Honorable Paul S. Grewal

1 Now before the Court is Plaintiffs' Acer Inc., Acer America Corporation and Gateway, Inc.'s  
2 (collectively "Plaintiffs") motion for administrative relief to file under seal: Plaintiffs' March 14,  
3 2013 letter to Judge Grewal in response to Defendants' unsolicited, ex parte March 13, 2013 letter to  
4 Judge Grewal and exhibits thereto.

5 Upon consideration of the motion and the supporting declaration of Harold H. Davis, filed  
6 therewith, the Court finds there to be good cause for granting Plaintiffs request to file the following  
7 document under seal:

8 1. Plaintiffs' letter to Judge Grewal dated March 14, 2013 in response to Defendants'  
9 unsolicited *ex parte* letter to Judge Grewal dated March 13, 2013; and

10 2. Exhibits to Plaintiffs' letter.

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

12 1. The parties possess overriding confidentiality interests that overcome the right of  
13 public access to the Requested Sealed Document;

14 2. The parties' overriding confidentiality interests support sealing the record;

15 3. A substantial probability exists that the parties' overriding confidentiality interests will  
16 be prejudiced if the record is not sealed;

17 4. The proposed sealing is narrowly tailored; and

18 5. No less restrictive means exist to achieve this overriding interest.

19 IT IS THEREFORE ORDERED that Plaintiffs' Administrative Motion for Leave to File  
20 Under Seal Plaintiffs' March 14, 2013 letter to Judge Grewal in response to Defendants' unsolicited,  
21 *ex parte* March 13 letter to Judge Grewal is GRANTED.

22 **IT IS SO ORDERED.**

23  
24  
25 Dated: March \_\_\_\_, 2013

\_\_\_\_\_  
The Honorable Paul S. Grewal  
United States Magistrate Judge