

1 John L. Cooper (State Bar No. 50324)
jcooper@fbm.com
2 Stephanie Powers Skaff (State Bar No. 183119)
sskaff@fbm.com
3 Eugene Y. Mar (State Bar No. 227071)
emar@fbm.com
4 Farella Braun + Martel LLP
235 Montgomery Street
5 San Francisco, CA 94104
Telephone: (415) 954-4400
6 Facsimile: (415) 954-4480

7 Attorneys for Defendants
TECHNOLOGY PROPERTIES LIMITED and
8 ALLIACENSE LIMITED

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. 5:08-cv-00877 JF/HRL

**DECLARATION OF MAC
LECKRONE IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE CONFIDENTIAL
EXHIBITS UNDER SEAL**

[Docket No. 285, Case No. 5:08-cv-00882]

[RELATED CASES]

21 HTC CORPORATION and HTC AMERICA,
22 INC.,

23 Plaintiffs,

24 v.

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

27 Defendants.
28

Case No. 5:08-cv-00882 JF/HRL

1 BARCO, N.V.,

Case No. 5:08-cv-05398 JF/HRL

2 Plaintiff,

3 vs.

4 TECHNOLOGY PROPERTIES LTD.,
5 PATRIOT SCIENTIFIC CORP., and
6 ALLIACENSE LTD.,

Defendants.

7 I, Mac Leckrone, declare as follows:

8 1. I am the President and Chief Operating Officer of defendant Alliacense Limited
9 (“Alliacense”). I have held this position for approximately five years. I am a member in good
10 standing of the California State Bar, although I do not operate in a legal capacity in my position at
11 Alliacense, and have never represented Alliacense, its parent, Technology Properties Limited
12 (“TPL”), or any related entities. I have personal knowledge of the matters set forth below, and if
13 called and sworn as a witness, I could and would competently testify to the facts set forth herein.

14 2. Alliacense is the corporate entity responsible for licensing and enforcing the
15 Moore Microprocessor Patent (“MMP”) Portfolio, which includes the patents-in-suit. As
16 President and Chief Operating Officer of Alliacense, I am primarily responsible for directing
17 Alliacense’s MMP Portfolio licensing program as well as the analysis involved in creating reverse
18 engineering product reports regarding potential infringement of the MMP Portfolio. To date, over
19 80 companies have entered into license agreements as part of Alliacense’s licensing program for
20 the MMP Portfolio.

21 3. Currently, Alliacense is in discussion with companies in various industries
22 regarding participation in the MMP Portfolio licensing program, in which prospective licensees
23 compete within their industry segment for “tiered” pricing, which rewards early movers with
24 lower royalty rates. Because of this competitive environment, Alliacense conducts all of its
25 negotiations confidentially to prevent information that is competitively sensitive to Alliacense and
26 TPL from being disseminated to other prospective licensees or third parties. Negotiations are
27 conducted between Alliacense and the prospective licensee, and despite frequent requests,
28 exclude third parties such as components vendors and other third parties.

1 4. As a part of Alliacense's licensing negotiations, Alliacense typically provides to
 2 the prospective licensee confidential "Product Reports" and other information relating to the
 3 MMP Portfolio. These Product Reports depict the confidential technical analyses, including
 4 significant reverse engineering efforts, conducted by Alliacense engineers, which demonstrate
 5 how a prospective licensee's strategically significant product lines utilize the MMP Portfolio.
 6 Alliacense's approach to the licensing of technology like the MMP Portfolio is unique in its
 7 volume, detail, breadth, and organization, and is the subject of frequent compliment by
 8 prospective licensees. Alliacense invests extremely significant financial and human resources in
 9 the development of its highly detailed Product Reports.

10 5. Product Reports are disseminated only to the prospective licensee and are treated
 11 as confidential material. The Product Reports all include a "confidential" stamp on every page
 12 and are proprietary to Alliacense. The Product Reports are solely intended to advance licensing
 13 negotiations by assisting a prospective licensee with evaluating Alliacense's licensing program.

14 6. If third party companies obtained the confidential information communicated
 15 between Alliacense and a prospective licensee, including the Product Reports, the information
 16 could be used to competitively harm Alliacense as well as the prospective licensee. Such
 17 competitively sensitive information includes the careful business analysis and selection of
 18 strategically significant products, the compilations of technical references and data used in
 19 supporting the analytical work, the reverse engineering reports purchased and conducted by
 20 Alliacense, and the technical analysis conducted by Alliacense engineers. Unintended third party
 21 access to this competitively sensitive information would likely be used to negotiate lower royalty
 22 rates with Alliacense and delay, obstruct, and harm negotiations with Alliacense by taking actions
 23 and sharing data pertaining to another company's potential license scope or the technical analysis
 24 conducted by Alliacense. Alliacense invests significant financial and human resources in the long
 25 sales cycles associated with its business model, which is built on education rather than litigation.
 26 If multiple prospective licensees, or third parties connected to multiple licensees, were given
 27 access to the competitively sensitive information, companies would likely coordinate their
 28 responses and strategies in an effort collectively to refuse to deal with Alliacense.

7. The Preliminary Infringement Contentions served in these cases incorporate or have attached to them confidential, detailed Product Reports containing the confidential technical analysis of the type described above, including Alliacense's Reverse Engineering Reports. These detailed Product Reports cover the product lines of Acer, Inc., Acer America Corporation, Gateway, Inc, HTC Corporation, HTC America, Inc., and Barco (collectively "Plaintiffs"). If the Alliacense Product Reports, which were marked as confidential and treated by all parties as confidential when provided, are suddenly not treated as confidential information, Plaintiffs and other companies would be free to share the content of the Product Reports with any number of companies, some of whom are known to be prospective licensees themselves, and known to be supporting the efforts of their customers who are also known to be prospective licensees. Without the confidentiality designation, this information that is confidential to Alliacense may even end up on the Internet. These prospective licensees could use the content of the Product Reports to coordinate their responses and strategies in an effort to block and harm Alliacense's licensing program, including a coordinated refusal to deal with Alliacense. The companies to which Plaintiffs could give Alliacense's proprietary information would otherwise pay substantial consideration to develop or purchase comparable information. Thus, the Product Reports, including the ones provided to Plaintiff as part of the ongoing negotiations, and as a helpful supplement to the Preliminary Infringement Contentions served in these cases, derive economic value by virtue of their being confidential. If the information from these Product Reports were deemed non-confidential, the information could be widely disseminated and cause significant, irreparable competitive harm to Alliacense.

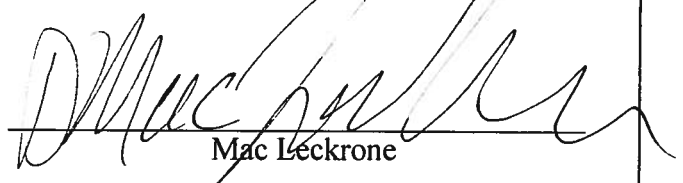
8. The excerpts of infringement contentions constituting Exhibit J to the Declaration of Kyle Chen in Support of Plaintiffs' Consolidated Responsive Claim Construction Brief are excerpts of Alliacense's Infringement Contentions and contain reproductions of Product Reports and reverse engineering reports belonging to Alliacense that relate to Plaintiffs' accused products in this litigation. These Product Reports and Reverse Engineering Reports were created by Alliacense and contain highly confidential proprietary information, and their public disclosure

1 would cause substantial harm to Alliacense's competitive and financial position as discussed
2 herein.

3 9. When similar Alliacense Product Reports were attached as exhibits to the
4 Declaration of Jeffrey M. Ratinoff in Support of Plaintiffs' Opposition to Defendants' Motion for
5 Leave to Amend Infringement Contentions Pursuant to Patent L.R. 3-7, and to Barco's Motion for
6 Summary Judgment of Non-Infringement as to U.S. Patent No. 5,809,336, the Court granted the
7 requests to seal those Product Reports. *See* Docket no. 188, case no. 5:08-cv-08877 & Docket
8 No. 128, case no. 5:08-cv-05398.

9 10. Exhibit E to the Declaration of Kyle Chen in Support of Plaintiffs' Consolidated
10 Responsive Claim Construction Brief is an excerpt of Charles Moore's deposition transcript in
11 *Technology Properties Ltd. v. Matsushita Electric Industrial Co.*, Civil Action No. 2-05CV-494
12 TJW (E.D. Tex.). On July 10, 2007, when this deposition was taken, Mr. Moore was Chief
13 Technical Officer of TPL. The excerpt discusses a number of microprocessor products developed
14 by Charles Moore, including those developed under the Intellasis brand owned by TPL, and the
15 clocking mechanisms employed by Mr. Moore. The details of the microprocessor clocking
16 mechanisms constitute competitively sensitive information and are confidential information.
17 Accordingly, the deposition transcript bears an "Attorney's Eyes Only" confidentiality legend.

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 on 30 JAN, 2011, at Cupertino, California.

20
21 
22 Mac Leckrone