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December 12, 2012

VIA FEDERAL EXPRESS

The Internet Engineering Task Force
c/o The Internet Society
1775 Wiehle Ave, Suite 201
Reston, VA 20190

Re: *Certain Electronic Imaging Devices*, Inv. No. 337-TA-850

Dear Sir or Madam:

We represent HTC Corporation and HTC America, Inc. in an investigation now before the United States International Trade Commission related to alleged patent infringement by electronic imaging devices. We believe The Internet Engineering Task Force to be in possession of books and/or publications that are relevant prior art to the patents-at-issue. The attached subpoena from the ITC seeks to authenticate these books and publications, as well as confirm the publicly availability of them in your files or collection.

We are of course happy to cooperate with you in finding mutually agreeable dates and locations for the production of documents and, if necessary, a deposition. Please do not hesitate to contact me at the phone number or email listed above should you want to discuss our requests, or if have any questions.

Sincerely,

Kevin J. Patariu

KJP:yh

Enclosure

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Theodore R. Essex
Administrative Law Judge**

In the Matter of:

**CERTAIN ELECTRONIC IMAGING
DEVICES**

Investigation No. 337-TA-850

**APPLICATION FOR ISSUANCE OF
SUBPOENA *DUCES TECUM* AND *AD TESTIFICANDUM***

Respondents HTC Corporation and HTC America, Inc. (collectively "HTC"), pursuant to Commission Rule 210.32 and Ground Rule 4.6.1, hereby apply to the Administrative Law Judge for issuance of a subpoena *duces tecum* and *ad testificandum* directed to:

The Internet Engineering Task Force
c/o The Internet Society
1775 Wiehle Ave, Suite 201
Reston, VA 20190

The subpoena requires the Internet Engineering Task Force ("IETF") to produce documents, materials and things ("materials") in response to requests detailed in **Attachment A** at the time and place indicated on the subpoena. The subpoena also requires the IETF to appear and testify regarding the subject matter set forth in **Attachment B** hereto at a deposition at the time and place indicated on the subpoena or at such other mutually agreed upon place and time .

HTC makes this Application in order to authenticate documents and standards it intends to use as prior art references, as well as prove publication dates and public availability of such documents and standards. Because the parties have been unable to stipulate to the authenticity and publication and public availability dates for relevant prior art and other documents, HTC necessarily seeks to obtain evidence and testimony of such from IETF, which is currently the

organization that originates the relevant documents and standards. HTC chooses IETF because the above information can be obtained directly therefrom due to IETF's role in setting and maintaining the standard(s).

The topics identified in Attachments A and B of the attached subpoena are narrowly tailored to address the limited issues of authenticity, and dates of publication and public availability of specific published documents and standards. Given the materiality of the information within IETF's possession, custody or control, and the limited nature of the subpoena and the documents and testimony sought, HTC requests that this Application be granted.

ETF will receive the application and subpoena by overnight delivery, if not sooner, and all other parties to this Investigation will receive them on the next business day, at the latest, after the subpoena has issued. For the reasons set forth above, HTC respectfully requests that its Application be granted and the attached subpoena be issued.

Dated: December 12, 2012

Respectfully submitted,

/s/ Kevin J. Patariu

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Counsel for Respondents
HTC Corporation and HTC America, Inc.

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Theodore R. Essex
Administrative Law Judge**

In the Matter of:

**CERTAIN ELECTRONIC IMAGING
DEVICES**

Investigation No. 337-TA-850

HTC'S SUBPOENA *DUCES TECUM* AND *AD TESTIFICANDUM*

To: The Internet Engineering Task Force
c/o The Internet Society,
1775 Wiehle Ave, Suite 201
Reston, VA 20190

TAKE NOTICE: By authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556 (c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Respondents HTC Corporation and HTC America, Inc. (collective, "HTC" or "Respondents"):

YOU ARE HEREBY ORDERED to produce at the offices of Perkins Coie LLP, located at 11988 El Camino Real, Suite 200, San Diego, California 92130-3579, Attention: Goldie Wilder, within ten (10) calendar days of receipt of this subpoena, or at such other time and place agreed upon, all documents and things in your possession, custody, or control that are listed and described in **Attachment A** hereto. Such production will be for the purpose of inspection and copying, as desired.

If production of any document listed and described in **Attachment A** hereto is withheld on the basis of a claim of privilege, each withheld document shall be separately identified in a privileged

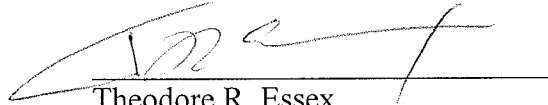
document list. The privileged document list must identify each document separately, specifying for each document at least: (1) the date; (2) author(s)/sender(s); (3) recipient(s), including copy recipient(s); and (4) general subject matter of the document. The sender(s) and recipient(s) shall be identified by position and entity (corporation or firm, etc.) by which they are employed or with which they are associated. If the sender or the recipient is an attorney or a foreign patent agent, he or she shall be so identified. The type of privilege claimed must also be stated, together with a certification that all elements of the claimed privilege have been met and have not been waived with respect to each document.

YOU ARE HEREBY ORDERED to appear for purpose of your deposition upon oral examination at 9:00am on December 24, 2012 at 11988 El Camino Real, Suite 200, San Diego, California 92130-3579, or at other time and place agreed upon, concerning the subject matter set forth in **Attachment B** hereto.

The deposition will continue from day to day until completed and will be conducted before a notary public and recorded by stenographic means. The deposition may also be recorded by real-time transcription display and videotape.

Any motion to limit or quash this subpoena shall be filed within **ten (10) days** after the receipt hereof. At the time of filing of any motion concerning this subpoena, two courtesy copies shall be served concurrently on the Administrative Law Judge at his office. This subpoena is being served by overnight delivery or process server.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this 12 day of December, 2012.

A handwritten signature in black ink, appearing to read 'T. Essex', is written over a horizontal line.

Theodore R. Essex
Administrative Law Judge
United States International Trade
Commission

ATTACHMENT A

CATEGORIES OF DOCUMENTS TO BE PRODUCED FOR INSPECTION AND COPYING

INSTRUCTIONS

1. For each request for production, state whether or not there exist any Documents within the scope of the request and whether any such Documents are in Your possession, custody, or control.
2. Any response made by reference to documents shall identify by document production number each responsive document.
3. HTC requests that you produce all documents which are responsive in whole or in part to any of the requests herein in its entirety, without abridgement, abbreviation, or expurgation of any sort, and regardless of whether you deem such documents to be irrelevant to the issues in the investigation for which such documents are being sought. If any such documents cannot be produced in full, produce the document to the extent possible and indicate in your written response what portion of the document is not produced and why it could not be produced.
4. You are required to produce not only the original or an exact copy of the original of all documents or things responsive to any of the requests herein, but also all copies of such documents or things which bear any notes or markings not found on the originals and all preliminary, intermediate, final, and revised drafts or embodiments of such documents or things. You are also required to produce all versions of the foregoing documents stored by a computer internally, on disk, on CD-ROM, or on tape.
5. Electronic records and computerized information must be produced in their native electronic format, together with a description of the system from which they were derived sufficient to permit rendering the records and information intelligible.

6. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced, such copies must be legible and bound or stapled in the same manner as the original.

7. All requested documents shall be produced in the same file or other organizational environment in which they are kept, including any labels, files, folders, and/or containers in which such documents are located or associated with, and produced stapled, clipped, or otherwise segregated in the same manner as the original so as to preserve the page breaks between documents and otherwise allow separate documents to be identified.

8. Color copies of Documents are to be produced where color is necessary to interpret or understand the contents.

9. The source(s) or derivation of each Document produced shall be specifically identified.

10. Selection of Documents from the files and other sources and the numbering of such Documents shall be performed in such a manner as to ensure that the source of each Document may be determined, if necessary.

11. The Requests for Documents seek any responsive document in your possession, custody, or control, no matter when the document was created. If no Documents exist that are responsive to a particular request, that fact should be stated in each of Your responses to such requests.

12. If you do not produce each document or thing requested herein as they are kept in the usual course of business, you must organize and label the documents or things produced to correspond with the particular document request to which the document or thing is responsive.

13. If any of the documents requested herein are no longer in your possession, custody, or control, you are requested to identify each such requested document by date, type of document, person(s) from whom sent, person(s) to whom sent, and to provide a summary of its pertinent contents.

14. If Your response to a particular request for production is a statement that You lack the ability to comply with that request, You must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in Your possession, custody, or control, in which case the name and address of any person or entity known or believed by You to have possession, custody, or control of that information or category of information must be identified.

15. In the event that any Document called for by these requests or subsequent requests has been destroyed or discarded, that Document is to be identified by stating: (i) the author(s), addressee(s) and any indicated or blind copyee(s); (ii) the Document's date, number of pages and attachments or appendices; (iii) the Document's subject matter; (iv) the date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (v) the person(s) who were authorized to carry out such destruction or discard; (vi) the person(s) who destroyed or discarded it; (vii) the circumstances under which it was destroyed or discarded and (vi) whether any copies of the Document presently exist and, if so, the name of the custodian of each copy.

16. Unless otherwise indicated in a particular request, the request is not date or time limited.

17. Where an identified document is in a language other than English, state whether an English translation of such document exists. If a document is in a language other than English and an English translation exists, identify and provide both documents.

18. For any information requested that is not readily available from Your records in the form requested, furnish carefully prepared estimates, designated as such. Attach a statement of the basis for such estimates and identify the person or persons making them.

19. If you find the meaning of any term in these document requests to be unclear, you must assume a reasonable meaning, state what the assumed meaning is, and produce documents on the basis of that assumed meaning.

20. You are to produce any purportedly privileged document containing non-privileged matter, with the purportedly privileged portion excised or redacted.

21. If any document is withheld under a claim of attorney-client privilege, attorney work product or other privilege, each such document must be separately identified on a privileged document list that must be provided to the requesting party within ten (10) calendar days following the date of production from which the privileged document was withheld. The privileged document list must specify for each document at least the following:

- A) the date that the document was created;
- B) the source(s) or sender(s) of the document, including the names, titles, and addresses of the document's authors;
- C) the names, titles, and addresses of the recipient(s) of the document, including copy recipients;
- D) a description of the general subject matter of the document;

- E) the portion of the document and number of pages for which privilege is claimed; and
- F) the nature of the privilege claimed and facts upon which You rely to support the claim of privilege; and
- G) the number(s) of the request(s) for production to which the document is responsive.

DEFINITIONS

The Instructions provided above, as well as the requests for production and deposition topics, are subject to and incorporate the following definitions, which have the broadest possible meaning under Commission Rule 210.27.

1. "HTC" means HTC Corporation and HTC America, Inc.
2. The terms "You," "Your," or "IETF" refer to the Internet Engineering Task Force and the Internet Society and any other entities constituting predecessors, subsidiaries, affiliates, divisions, associated organizations, joint ventures, as well as present and former officers, directors, trustees, employees, staff members, agents, or other representatives, including counsel and patent agents, in the United States.
3. The term "MIME (Multipurpose Internet Mail Extensions)" refers to the document(s) published on your web site at <http://www.ietf.org/rfc/rfc1341.txt> bearing the title "MIME (Multipurpose Internet Mail Extensions): Mechanisms for Specifying and Describing the Format of Internet Message Bodies, Networking Work Group, Request for Comments: 1341 (June 1992)", authored by N. Borenstein & N. Freed.
4. The term "Hypertext Markup Language - 2.0" refers to the document(s) published on your web site at <http://tools.ietf.org/html/rfc1866> bearing the title "Hypertext Markup

Language - 2.0, Network Working Group, Request for Comments: 1866 (November 1995)", authored by T. Berners-Lee and D. Connolly.

5. The term "MIME Multipart/Related Content-type" refers to the document(s) published on your web site at <http://www.ietf.org/rfc/rfc2387.txt> bearing the title "The MIME Multipart/Related Content-type, Network Working Group, Request for Comments: 2387 (August 1998)", authored by E. Levinson.

6. The term "Internet Message Format" refers to the document(s) published on your web site at <http://www.ietf.org/rfc/rfc2822.txt> bearing the title "Internet Message Format, Network Working Group, Request for Comments: 2822 (April 2001)," authored by P. Resnick.

7. "Document," "documents" or "all documents" is used in its customarily broad sense within the context of Commission Rule 210.30 and the Federal Rules of Civil Procedure, and includes all documents as that term is defined in Fed. R. Civ. P. 34, including without limitation all drafts, prior versions, changes, alterations and translations thereto and all specifications, changes to the specifications, modifications of the specifications, alterations or enhancements to the specifications, block diagrams, databases, depictions, photographs, source code, object code, flowcharts, engineering and design drawings, engineering change documents, simulations, videotapes, training materials, presentation materials, brochures, technical disclosures, newsletters, catalogs, magazines, manuals, journals, electronic mail, memoranda notes, laboratory notebooks, test results, application notes, design notes, machine settings, standard operating procedures ("SOPs"), standards, web pages and user manuals. "Document," "documents" or "all documents" also means any tangible object or thing including without limitation prototypes, models and specimens. The foregoing specifically includes information stored electronically, whether in a computer database or otherwise, regardless of whether such

documents are presently in documentary form or not. A draft or non-identical copy of a Document is a separate Document within the meaning of this term.

8. The term "communication" means any transmission of information from one person or entity to another including without limitation by personal meeting, telephone, written correspondence (including without limitation letters, memoranda, and notes), facsimile and electronic transmissions such as e-mail, instant messaging, and text messaging.

9. The term "thing" refers to any physical specimen or tangible item in Your possession, custody or control, including research and development samples, prototypes, productions samples and the like.

10. The term "date" means the exact day, month and year, if ascertainable, and if the exact day, month and year are not ascertainable, then the best approximation thereof.

11. The phrases "referring to," "related to," "relating to," "concerning" or "regarding" include, but are not limited to, relating to, referring to, alluding to, concerning, connected with, commenting on, in respect of, about, regarding, describing, summarizing, reflecting, discussing, containing, embodying, mentioning, showing, evidencing, constituting, or supporting or in any other way concern the subject matter. .

12. Unless otherwise indicated by the context, the term "identify":

A. when used in connection with documents, means to furnish means the date, title, if any, subject matter, each author, each addressee or recipient if practicable, and otherwise a general description of the persons to whom the writing was distributed, the production number, and the type of document, *i.e.*, publication, letter, memorandum, book, telegram, chart etc., or some other means of identifying the document, and its present location and custodian;

- B. when used in connection with an individual person or persons, means to furnish a statement of the person's full name; the person's present or last known address; the person's present or last known telephone number; the name of the person's present or last known employer, along with that employer's address; and the person's present or last known job title;
- C. when used in connection with a firm, partnership, corporation, proprietorship, joint venture, association, or other organization or entity, means its full name, present or last known address and place of incorporation or formation and the identity of each agent that acted for it with respect to the matters relating to the request or answer;
- D. when used in connection with things, including products or other physical objects, means to furnish a complete description of the things, including its common designation, its composition, its physical characteristics, and any other distinguishing characteristics;
- E. when used in connection with a communication, means its date and place, the person(s) who participated in it or who were present during any part of it or who have knowledge about it;
- F. when used in connection with a date, means the date and set forth the basis for Your contention that the date is responsive to the request; and
- G. when used in connection with a product, service, or intellectual property, means all names and numbers related to the product, service, or intellectual property, and the owner, manufacturer, distributor, licensor, or dealer of the product, service, or intellectual property during the relevant time period and currently. For a product,

it means all designations for the product, from the most specific to the most general, including any model numbers or designations, version numbers or designations, and internal numbers or designations.

13. The terms "person" and "persons" include both natural persons and entities (including corporations, proprietorships, partnerships, associations, joint ventures, governmental agencies, and other entities, and any combination thereof, and all predecessors in interest, successors, affiliates, subsidiaries, and related entities).

14. The terms "and," "or," and "and/or" shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. All pronouns shall be construed to refer to the masculine, feminine, or neuter gender, in singular or plural, as in each case makes the request more inclusive.

DOCUMENT REQUESTS

1. Documents and communications related to Your publication and maintenance of "MIME (Multipurpose Internet Mail Extensions)," including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

2. Documents and communications related to the accessing of "MIME (Multipurpose Internet Mail Extensions)," including but not limited to the first date that the standard was accessed by an individual and subsequent access records.

3. Documents and communications related to Your publication and maintenance of "Hypertext Markup Language - 2.0," including but not limited to documents reflecting when the

document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

4. Documents and communications related to the accessing of “Hypertext Markup Language - 2.0,” including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

5. Documents and communications related to Your publication and maintenance of “MIME Multipart/Related Content-type,” including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

6. Documents and communications related to the accessing of “MIME Multipart/Related Content-type,” including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

7. Documents and communications related to Your publication and maintenance of “Internet Message Format,” including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

8. Documents and communications related to the accessing of “Internet Message Format,” including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

9. Documents and communications related to Your practice, since at least January 1, 1992, of publishing and maintaining standards upon your web site(s), including the practice of establishing uniform resource identifiers, such as URLs, for such standards, and making them available to the public.

10. Documents and communications related to the identification of persons responsible for publishing and maintaining standards upon your web site(s) since January 1, 1992.

ATTACHMENT B

INSTRUCTIONS

1. You are required to provide one or more individuals who are knowledgeable and competent to provide testimony about the topics listed herein.

DEFINITIONS

2. The definitions set forth in **Attachment A** are incorporated by reference.

DEPOSITION TOPICS

1. The authenticity of the documents and communications produced in response to **Attachment A**.
2. Whether the documents and communications produced in response to **Attachment A** were created by the people listed thereon or therein as author(s), and, if no author is listed, who the author is.
3. The subject matter of any of the documents and communications produced in response to **Attachment A**.
4. Your publication and maintenance of "MIME (Multipurpose Internet Mail Extensions)," including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.
5. The accessing of "MIME (Multipurpose Internet Mail Extensions)," including but not limited to the first date that the standard was accessed by an individual and subsequent access records.
6. Your publication and maintenance of "Hypertext Markup Language - 2.0," including but not limited to documents reflecting when the document or standard was first made

available by IETF, how and where it was made available, and when it would have been publicly available.

7. The accessing of "Hypertext Markup Language - 2.0," including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

8. Your publication and maintenance of "MIME Multipart/Related Content-type," including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

9. The accessing of "MIME Multipart/Related Content-type," including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

10. Your publication and maintenance of "Internet Message Format," including but not limited to documents reflecting when the document or standard was first made available by IETF, how and where it was made available, and when it would have been publicly available.

11. The accessing of "Internet Message Format," including but not limited to the first date that the document or standard was accessed by an individual and subsequent access records.

12. Your practice, since at least January 1, 1992, of publishing and maintaining standards upon your web site(s), including the practice of establishing uniform resource identifiers, such as URLs, for such standards, and making them available to the public.

13. The identification of persons responsible for publishing and maintaining standards upon your web site(s) since January 1, 1992.

ATTACHMENT C

ATTACHMENT C

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN ELECTRONIC IMAGING DEVICES

Inv. No. 337-TA-850

ORDER NO. 1: PROTECTIVE ORDER

(June 29, 2012)

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. § 210.5;

IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such

information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)).

2(a). Any information submitted, in pre hearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice. Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order.

(b). The Administrative Law Judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the Administrative Law Judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.

3. In the absence of written permission from the supplier or an order by the Commission or the Administrative Law Judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii)

technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts which are the subject of this investigation); (iv) the Commission, the Administrative Law Judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.¹

4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i)² and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.

5. If the Commission or the Administrative Law Judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be

¹ See Commission Administrative Order 97-06 (Feb. 4, 1997).

² Necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing onto the protective order.

considered subject to it, unless the Commission or the Administrative Law Judge finds that the information is not confidential business information as defined in paragraph 1 thereof.

6. Any confidential business information submitted to the Commission or the Administrative Law Judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter or translator receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.

7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the Administrative Law Judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

8. The Commission, the Administrative Law Judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the Administrative Law Judge. When such information is made part of a pleading or is offered into the evidentiary record, the data set forth in 19 C.F.R. § 201.6 must be provided except during the time that the proceeding is pending before the Administrative Law Judge. During that time, the party offering the confidential business information must, upon request, provide a statement as to the claimed basis for its confidentiality.

9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the Administrative Law Judge that information designated as confidential, is no longer confidential, the Commission, the Administrative Law Judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access to such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to redesignate or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the

Administrative Law Judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

10. If while an investigation is before the Administrative Law Judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation; such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the Administrative Law Judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the Administrative Law Judge who will rule upon the matter. The Administrative Law Judge may sua sponte question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.

11. No less than 10 days (or any other period of time designated by the Administrative Law Judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefore

prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the Administrative Law Judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the Administrative Law Judge. The terms of this paragraph shall be inapplicable to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the Administrative Law Judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the Administrative Law Judge concerning the issue of the status of confidential business information.

14. Upon final termination of this investigation, each recipient of confidential business information that is subject to this order shall assemble and return to the supplier all items containing such information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business

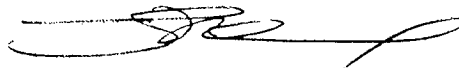
information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be transmitted to a district court pursuant to Commission Rule 210.5(c).

15. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be considered a "supplier" as that term is used in the context of this order.

16. Each nonparty supplier shall be provided a copy of this order by the party seeking information from said supplier.

17. The Secretary shall serve a copy of this order upon all parties.

A handwritten signature in dark ink, appearing to read 'Theodore R. Essex', is written over a horizontal line.

Theodore R. Essex
Administrative Law Judge

Attachment A

NONDISCLOSURE AGREEMENT FOR REPORTER/STENOGRAPHER/TRANSLATOR

I, _____, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the investigation or hearing in the matter of *Certain Electronic Imaging Devices*, Investigation No. 337-TA-850, except as permitted in the protective order issued in this case. I will not directly or indirectly use, or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the investigation or hearing in this case.

I also affirm that I do not hold any position or official relationship with any of the participants in said investigation.

I am aware that the unauthorized use or conveyance of information as specified above is a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000, imprisonment of up to ten (10) years, or both.

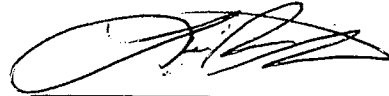
Signed _____

Dated _____

Firm or affiliation _____

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated on **June 29, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FlashPoint Technology, Inc.:

Goutam Patnaik, Esq.
PEPPER HAMILTON LLP
600 Fourteenth Street, NW
Washington, DC 20005-2004

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Respondents:

HTC Corporation
23 Xinghua Road
Taoyuan, 330, Taiwan

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

HTC America, Inc.
13920 SE Eastgate Way, Suite 400
Bellevue, WA 98005

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Pantech Co., Ltd.
Pantech Building I-2, DMC
Sangam-dong, Mapo-gu
Seoul 121-792
Republic of Korea

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Pantech Wireless, Inc.
5607 Glenridge Dr. NE, Suite 500
Atlanta, GA 30342-7200

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Certificate of Service – Page 2

Respondents (cont.):

Huawei Technologies Co., Ltd.
Bantian, Longgang District
Shenzhen, Guangdong Province
51 g 1-29
China

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

FutureWei Technologies, Inc.
d/b/a Huawei Technologies (USA)
5700 Tennyson Parkway, Suite 500
Plano, TX 75201-4234

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

ZTE Corporation
ZTE Plaza, No. 55 Hi-Tech Road South
Shenzhen, Guangdong Province 518057
China

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

ZTE (USA) Inc.
2425 N. Central Expy., Suite 600
Richardson, TX 75080

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

Public:

Heather Hall
LEXIS-NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

Kenneth Clair
THOMSON WEST
1100 13th Street, NW, Suite 200
Washington, DC 20005

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

ATTACHMENT A

Additional categories of protected documents beyond those provided in the Protective Order (Order No. 1) shall be provided for Non-Party QUALCOMM. Accordingly, hereinafter documents, source code, or schematics that are produced or submitted by Non-Party QUALCOMM or Respondents in connection with the above-captioned matter that are designated as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM - OUTSIDE ATTORNEYS EYES’ ONLY –SOURCE CODE” shall be subject to the following restrictions:

Definitions

1. “Material”: all information, documents, source code, schematics, testimony, and things generated, produced, served, or otherwise provided in this Litigation by Non-Party QUALCOMM.

2. “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” Material: information, documents, and things Non-Party QUALCOMM believes in good faith is not generally known to others, and that Non-Party QUALCOMM (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy.

3. “Source Code” and “Chip-Level Schematics”:

- a) “Source Code” includes human-readable programming language text that defines software, firmware (collectively “software Source Code”) and integrated circuits (“hardware Source Code”). Text files containing Source Code shall hereinafter be referred to as “Source Code files.” Software Source Code files include, but are not limited to files containing Source Code in “C”, “C++”, BREW, Java ME, J2ME, assembler, digital signal processor (DSP) programming languages, and other human readable text programming languages. Software Source Code files further include “.include files,” “make” files, “link” files, and other human-readable text

files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. Hardware Source Code files include, but are not limited to files containing Source Code in VHDL, Verilog, and other Hardware Description Language (“HDL”) formats, including but not limited to, Register Transfer Level (“RTL”) descriptions.

- b) “Chip-Level Schematics” means symbolic representations of analog electric or electronic circuits from which the physical structure of a chip is directly derived.

4. “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”

Material: Source Code and Chip-Level Schematics that Non-Party QUALCOMM believes in good faith is not generally known to others, and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and that Non-Party QUALCOMM would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence.

5. “Receiving Party”: a Party that receives Material from Non-Party QUALCOMM or Respondents.

6. “Designated Material”: Material that is designated “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY,” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” under this Order.

7. “Counsel of Record”: (i) outside counsel who appears on the pleadings as counsel for a Party, (ii) partners, principals, counsel, associates, employees and contract attorneys of such outside counsel to whom it is reasonably necessary to disclose the information for this Litigation, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters, and/or (iii) independent legal translators retained to translate in connection with this Litigation, or independent shorthand reporters retained to record and transcribe testimony in connection with this Litigation.

8. "Outside Consultant": a person with specialized knowledge or experience in a matter pertinent to the Litigation who has been retained by Counsel of Record to serve as an expert witness, or as a litigation consultant in this Litigation, and who is not a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party, or 3) a competitor of Non-Party QUALCOMM.

9. "Professional Vendors": persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors who have been retained by Counsel of Record in this Litigation, and who are not current employees of a Party or of a competitor of a Party and who, at the time of retention, are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, or 3) a competitor of Non-Party QUALCOMM. This definition includes ESI vendors, professional jury or trial consultants retained in connection with this Litigation retained by such consultants to assist them in their work. Professional vendors do not include consultants who fall within the definition of Outside Consultant.

Scope

10. The protections conferred by this Order cover not only Designated Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure or any applicable local rules or General Orders. Identification of any individual pursuant to this Supplemental Protective Order does not make that individual available for deposition, or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure or any applicable local rules or General Orders.

Access To Designated Material

11. Access to "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" Material: Unless otherwise ordered by the United States International Trade Commission or permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any information, document or thing designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" only to:

- a) Persons who appear on the face of Designated Material as an author, addressee or recipient thereof;
- b) Counsel of Record;
- c) Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this Litigation, and who have, after the date of this Supplemental Protective Order, signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A, and the "Certification Of Consultant" attached hereto as Exhibit B;
- d) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A, and the "Certification Of Consultant" attached hereto as Exhibit B, as well as any of the arbitrator's or mediator's staff who have also signed Exhibits A and B;
- e) Court reporters and videographers employed in connection with this Litigation; and
- f) Professional Vendors to whom disclosure is reasonably necessary for this Litigation, and a representative of which has signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A, subject to the following

exception: Designated Material shall not be disclosed to mock jurors without Non-Party QUALCOMM's express written consent.

g) The Court and its personnel.

12. Access to "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" Material: Unless otherwise ordered by the United States International Trade Commission or permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any information, document or thing designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" only to:

- a) Persons who appear on the face of Designated Material as an author, addressee or recipient thereof;
- b) Counsel of Record;
- c) Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this Litigation, and who have signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A, and the "Certification Of Consultant" attached hereto as Exhibit B;
- d) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A; and the "Certification of Consultant" attached hereto as Exhibit B provided, however, that before such disclosure, QUALCOMM is provided notice including: (a) the individual's name and business title; (b) business address; (c) business or professions; and (d) the individual's CV. QUALCOMM shall have five (5) business days from receipt of the notice to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile

transmission). After the expiration of the 5-days (plus 3-days, if appropriate) period, if no objection has been asserted, then "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY-SOURCE CODE" materials may be disclosed pursuant to the terms of this Supplemental Protective Order;

- e) Court reporters and videographers employed in connection with this Litigation, subject to the provisions provided in paragraph 19.f herein; and
- f) Professional Vendors to whom disclosure is reasonably necessary for this Litigation, and a representative of which has signed the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A, subject to the following exception: Designated Material shall not be disclosed to mock jurors without Non-Party QUALCOMM's express written consent.
- g) The Court and its personnel.

13. Absent an order from the United States International Trade Commission or agreement of Non-Party QUALCOMM, Designated Material may not be disclosed to employees of a Receiving Party, including its in-house attorneys and support staff.

14. Receiving Party may host "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" Material only on either 1) any system inside the firewall of a law firm representing the Receiving Party, or 2) inside the system of a professional ESI Vendor retained by Counsel of Record of the Receiving Party. "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" Material also cannot be sent or transmitted to any person, location, or vendor outside of the United States except to Counsel of Record and Outside Consultants designated in subparagraph c above. To the extent that any "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" Material is transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's office, or outside of the ESI Vendor's system, the transmission shall be by hand (and

encrypted if in electronic format), by a secure transport carrier (e.g., Federal Express), or by encrypted electronic means.

15. Each person to whom Designated Material may be disclosed, and who is required to sign the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A and, if applicable, the "Certification Of Consultant" attached hereto as Exhibit B, shall do so, prior to the time such Designated Material is disclosed to him or her. Counsel for the Receiving Party who makes any disclosure of Designated Material shall retain each original executed certificate and, upon written request, shall provide copies to counsel for Non-Party QUALCOMM at the termination of this Litigation.

16. Absent written permission from Non-Party QUALCOMM, persons not permitted access to Designated Material under the terms of this Supplemental Protective Order shall not be present at depositions while Designated Material is discussed or otherwise disclosed. Pre-trial and trial proceedings shall be conducted in a manner, subject to the supervision of the United States International Trade Commission, to protect Designated Material from disclosure to persons not authorized to have access to such Material. Any Party intending to disclose confidential information from Designated Material at pretrial or trial proceedings must give advanced notice to assure the implementation of the terms of this Supplemental Protective Order.

Access By Outside Consultants

17. Notice. If a Receiving Party wishes to disclose Designated Material to any Outside Consultant, such Receiving Party must provide notice to counsel for Non-Party QUALCOMM, which notice shall include: (a) the individual's name, business title, country(ies) of citizenship, and country of residence; (b) business address; (c) business or profession; (d) the individual's CV; (e) any previous or current relationship (personal or professional) with any of the parties; (f) a list of other cases in which the individual has testified (at trial or deposition) within the last six years; (g) a list of all companies with which the individual has consulted or by which the individual has been employed within the last four years including the dates of the consulting or employment and a brief description of the subject matter of the consultancy or employment; and

(h) a signed copy of the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached as Exhibit A, and the "Certification Of Consultant" attached hereto as Exhibit B.;

18. Objections. Non-Party QUALCOMM shall have five (5) business days from receipt of the notice specified in Paragraph 17 to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5-day (plus 3-days, if appropriate) period, if no objection has been asserted, then Designated Material may be disclosed to the Outside Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by Non-Party QUALCOMM must set forth in detail the grounds on which it is based. Should the Receiving Party disagree with the basis for the objection(s), the Receiving Party must first attempt to resolve the objection(s) informally with Non-Party QUALCOMM. If the informal efforts do not resolve the dispute within five (5) business days, the Receiving Party may file a motion requesting that the objection(s) be quashed after that five (5) day period has passed. Non-Party QUALCOMM shall have the burden of proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the United States International Trade Commission upon any such objection(s), the discovery material shall not be disclosed to the person objected to by Non-Party QUALCOMM.

Production of QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE Material

19. Non-Party QUALCOMM's Source Code and Chip-Level Schematics:

a) To the extent that Non-Party QUALCOMM or Respondents make Non-Party Qualcomm's Source Code or Chip-Level Schematics available for inspection:

(i) Non-Party QUALCOMM or Respondents shall make all relevant and properly requested Non-Party Qualcomm Source Code available electronically and in text searchable form (1) if

produced by Non-Party Qualcomm, in a secure room at a secure facility selected by Non-Party QUALCOMM or, (2) if produced by Respondents, at the offices of outside counsel for the producing Respondent. Non-Party QUALCOMM shall make the Source Code available for inspection on a stand-alone, non-networked personal computer running a reasonably current version of the Microsoft Windows operating system ("Source Code Computer"). The Source Code Computer shall be configured to permit review of the Source Code through a password-protected account having read-only access. The Receiving Party may use appropriate tool software on the Source Code Computer, which shall be installed by Non-Party QUALCOMM, including at least one text editor like Visual Slick Edit that is capable of printing out Source Code with page and/or line numbers and at least one multi-file text search tool such as "grep." Should it be necessary, other mutually agreed upon tools may be used. Licensed copies of other mutually agreed upon tool software shall be installed on the Source Code Computer by Non-Party QUALCOMM, and paid for by the Receiving Party.

(ii) Non-Party QUALCOMM shall make all relevant and properly requested Chip-Level Schematics available for inspection electronically on the Source Code Computer in a secure room at a secure facility selected by Non-Party QUALCOMM. Non-party QUALCOMM shall ensure that the Source Code Computer includes software sufficient to allow a user to view such electronic Chip-Level Schematics.

- b) Non-Party QUALCOMM shall provide access to the Source Code Computer during the normal operating hours of the secure facility during a

reasonable number of days appropriate for the review by the Receiving Party.

- c) The Source Code Computer shall be equipped to print copies of the Source Code and Chip-Level Schematics on watermarked pre-Bates numbered paper, which shall be provided by Non-Party QUALCOMM. Under no circumstances are original printouts of the Source Code or Chip-Level Schematics to be made except for directly onto the watermarked and numbered sides of the paper provided by Non-Party QUALCOMM. Additionally, the Receiving Party shall not print any continuous block of Source Code that results in more than 50 printed pages. Counsel for Non-Party QUALCOMM will keep the original printouts, and shall provide copies of such original printouts to counsel for the Receiving Party within 48 hours of being notified that such original printouts have been made. Counsel for the Receiving Party may request up to 10 copies of each original printout of Source Code or Chip-Level Schematics. No more than 10% or 500 pages of the total Source Code (not including copies of original printouts) for any software release (or in the case of hardware Source Code, for any hardware product), no more than 500 pages of Chip Level Schematics, and no continuous blocks of Source Code that exceed 50 pages may be in printed form at any one time, and all printed Source Code and Chip-Level Schematics shall be logged by the Receiving Party as noted in paragraph h below. If necessary, the Receiving Party may request to print additional pages in excess of the 10% or 500 pages of total Source Code for a software release or a hardware product, or more than 500 pages of Chip Level Schematics, or continuous blocks of Source Code or Chip-Level Schematics that exceed 50 pages, which request Non-Party QUALCOMM shall not unreasonably deny. No additional electronic

copies of the Source Code or Chip-Level Schematics shall be provided by Non-Party QUALCOMM. Hard copies of the Source Code or Chip-Level Schematics also may not be converted into an electronic document, and may not be scanned using optical character recognition ("OCR") technology. The Receiving Party shall not print Source Code or Chip-Level Schematics in order to review the Source Code or Chip-Level Schematics elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code or Chip-Level Schematics electronically on the Source Code Computer, as the parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of the Source Code or Chip-Level Schematics for review and analysis in the first instance elsewhere.

- d) The Receiving Party is prohibited from bringing outside electronic devices, including but not limited to laptops, floppy drives, zip drives, or other hardware into the secure room. Nor shall any cellular telephones, personal digital assistants (PDAs), Blackberries, cameras, voice recorders, Dictaphones, telephone jacks or other devices be permitted inside the secure room.
- e) If any individual inspecting Non-Party QUALCOMM's Source Code or Chip-Level Schematics seeks to take notes, all such notes will be taken on bound (spiral or other type of permanently bound) notebooks. No loose paper or other paper that can be used in a printer may be brought into the secure room.
- f) Where absolutely necessary or required by the United States International Trade Commission, a Receiving Party may make further copies of original Source Code or Chip-Level Schematics printouts to be included in pleadings filed under seal, to be included as exhibits in expert reports, or

to be used as exhibits in depositions, where such pleadings, expert reports, and transcripts from such depositions are designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE". In the event copies of Source Code or Chip-Level Schematics printouts are used as exhibits in a deposition, the printouts shall not be provided to the court reporter and further copies of the original Source Code or Chip-Level Schematics printouts made for the deposition shall be either destroyed or provided to counsel for Non-Party QUALCOMM at the conclusion of the deposition.

- g) In addition to other reasonable steps to maintain the security and confidentiality of Non-Party QUALCOMM's Source Code or Chip-Level Schematics, printed copies of the Source Code or Chip-Level Schematics maintained by the Receiving Party must be kept in a locked storage container when not being actively reviewed.
- h) The Receiving Party's counsel shall keep a log that records the identity of each individual to whom each hard copy of the Source Code or Chip-Level Schematics is provided and when it was provided to that person, and within thirty days after the issuance of a final, non-appealable decision resolving all issues in the Litigation, the Receiving Party must serve upon Non-Party QUALCOMM the log. In addition, any Outside Consultants of the Receiving Party to whom the paper copies of the Source Code or Chip-Level Schematics were provided must certify in writing that all copies of the Source Code or Chip-Level Schematics were returned to the counsel who provided them the information and that they will make no use of the Source Code or Chip-Level Schematics, or of any knowledge gained from the Source Code or Chip-Level Schematics, in any future endeavor.

Prosecution and Development Bar

20. Unless otherwise permitted in writing between Non-Party QUALCOMM and a Receiving Party, other than Outside Consultants as defined under Section 11 c. supra, any individual who personally receives, other than on behalf of Non-Party QUALCOMM, any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" shall not participate in or be responsible for preparation or prosecution before a Patent Office of any patent, patent application, or for drafting or revising patent claims that are substantially related to the particular technology or information disclosed in the Designated Material, from the time of receipt of such material through and including the first to occur of (i) the complete resolution of this Litigation through entry of a final non-appealable judgment or order for which appeal has been exhausted and completion of the requirements of section 36, infra; (ii) the complete settlement of all claims in this Litigation and completion of the requirements of section 36, infra; (iii) the individual person(s) cease to represent the Receiving Party or respective client in this Litigation; or (iv) the individual person(s) cease to have access to any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY SOURCE CODE." This bar is not intended to preclude any expert consultant from performing administrative tasks for pending patent applications on which the expert consultant is an inventor. Administrative tasks in this context do not include directly or indirectly (e.g., by advising) drafting or revising patent claims that are substantially related to the particular technology or information disclosed in the Designated Material.

21. Unless otherwise permitted in writing between Non-Party QUALCOMM and a Receiving Party, any expert consultant retained on behalf of Receiving Party who is to be given access to Non-Party QUALCOMM' s documents, Source Code, or Chip-Level Schematics designated as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" must agree in writing not to perform hardware or software development work or product development work directly or

indirectly intended for commercial purposes substantially related to the particular technology or information in the Designated Material, which is not publicly known, from the time of receipt of such material through and including the first to occur of (i) the date the expert consultant ceases to represent the Receiving Party or respective client in this case or (ii) the date the expert consultant ceases to have access to any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE."

Use Of Designated Material

22. Use Of Designated Material By Receiving Party. Unless otherwise ordered by the United States International Trade Commission, or agreed to in writing by Non-Party QUALCOMM, all Designated Material, and all information derived therefrom, shall be used by the Receiving Party only for purposes of this Litigation, and shall not be used in any other way, or for any other purpose, including the acquisition, preparation or prosecution before the Patent Office of any patent, patent application, for drafting or revising patent claims, or in connection with patent licensing or product development work directly or indirectly intended for commercial purposes substantially related to the particular technology or information disclosed in the Designated Material. Information contained or reflected in Designated Material shall not be disclosed in conversations, presentations by parties or counsel, in court or in other settings that might reveal Designated Material, except in accordance with the terms of this Order.

23. Use Of Designated Material By Non-Party QUALCOMM. Nothing in this Order shall limit Non-Party QUALCOMM's use of its own documents and information, nor shall it prevent Non-Party QUALCOMM from disclosing its own confidential information, documents or things to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

24. Use of Designated Material at Depositions. Except as may be otherwise ordered by the United States International Trade Commission, any person may be examined as a witness at

depositions and trial, and may testify concerning all Designated Material of which such person has prior knowledge, without in any way limiting the generality of the following

- a) A witness testifying on behalf of Non-Party QUALCOMM pursuant to a subpoena may be examined concerning all Designated Material that has been produced by Non-Party QUALCOMM; and
- b) A former director, officer, agent and/or employee of Non-Party QUALCOMM may be interviewed, examined and may testify concerning all Designated Material of which he or she has prior knowledge, including any Designated Material that refers to matters of which the witness has personal knowledge, that has been produced by Non-Party QUALCOMM and that pertains to the period or periods of his or her employment.

Non-Party QUALCOMM shall, on request prior to the deposition, make a searchable electronic copy of the QUALCOMM Source Code available on a stand-alone computer connected to a printer during depositions of QUALCOMM personnel otherwise permitted access to such Source Code. To the extent required, the party conducting the deposition may print additional pages of Source Code to be marked as exhibits at such deposition consistent with other provisions and limitations of this Supplemental Protective Order.

25. Use of Designated Material at Hearing or Trial. The parties will give Non-Party QUALCOMM prior notice of, and an opportunity to object to, any intended use of the Designated Material at any hearing or trial in this case, including but not limited to when such Designated Material is used in Direct or Rebuttal Witness Statements pursuant to ALJ Essex's customary practice and procedure. Said notice shall (1) be served by facsimile or email on counsel for Non-Party QUALCOMM at least five (5) business days prior to the hearing or the first day of trial, (2) identify the Designated Material with specificity while redacting any other

Party's Confidential Business Information and (3) identify the measures the party intends to rely upon to protect the Designated Material when used at any hearing or trial consistent with this Supplemental Protective Order. This section shall not limit in any way the use of Designated Material during the cross-examination of any witness otherwise permitted access to such Designated Material, as long as the parties take all necessary steps to protect and maintain the confidentiality of any such Designated Material so used.

Procedure for Designating Materials

26. Subject to the limitations set forth in this Order, Non-Party QUALCOMM may: designate as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" information that it believes, in good faith, meets the definition set forth in Paragraph 2 above; and designate as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" information that it believes, in good faith, meets the definition set forth in Paragraph 4 above.

27. Except as provided above in paragraph 19 with respect to "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" Material, any material (including physical objects) made available by Non-Party QUALCOMM for initial inspection by counsel for the Receiving Party prior to producing copies of selected items shall initially be considered, as a whole, to constitute "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" information, and shall be subject to this Order. Thereafter, Non-Party QUALCOMM shall have ten (10) calendar days from the inspection to review and designate the appropriate documents as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" prior to furnishing copies to the Receiving Party.

28. Designation in conformity with this Order shall be made as follows:

- a) For information in documentary form (apart from transcripts of depositions, or other pretrial or trial proceedings), Non-Party QUALCOMM shall affix the legend "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" on each page that contains Designated Material.

- b) For testimony given in deposition, or in other pretrial or trial proceedings, Non-Party QUALCOMM shall specify any portions of the testimony that it wishes to designate as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY", or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE." In the case of depositions, Non-Party QUALCOMM may also designate any portion of a deposition transcript as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY", and/or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" by informing the reporter, and the Parties, in writing within thirty (30) calendar days of completion of the deposition of the designations to be applied. All deposition transcripts involving Designated Material and not marked at least "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" during the deposition will nonetheless be treated as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" until the thirty (30) day period has expired. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" and/or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" as instructed by Non-Party QUALCOMM.
- c) For information produced in some form other than documentary, and for any other tangible items, Non-Party QUALCOMM shall affix in a prominent place on the exterior of the container or containers in which the information or thing is stored the legend "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE".

- d) The provisions of subparagraphs 28(a)-(c) do not apply to documents produced in native format. For documents produced in native format, the parties shall provide written notice to the Receiving Party of any confidentiality designations at the time of production.

Waiver of Privilege

29. Inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client privilege, work product immunity, or any other applicable privilege or immunity, if, after Non-Party QUALCOMM becomes aware of any such disclosure, Non-Party QUALCOMM designates any such documents as within the attorney-client privilege, work product immunity or any other applicable privilege or immunity, and requests in writing return of such documents to Non-Party QUALCOMM. Upon request by Non-Party QUALCOMM, the Receiving Party shall immediately retrieve and return all copies of such document(s). Nothing herein shall prevent the Receiving Party from challenging the propriety of the attorney-client privilege, work product immunity or other applicable privilege or immunity designation by submitting a written challenge to the United States International Trade Commission; provided, however, that such challenge shall not assert as a ground for challenge the fact of the initial or inspection of the documents later designated as attorney-client privileged, work product, or subject to another applicable privilege or immunity.

Inadvertent Failure To Designate

30. An inadvertent failure to designate qualified information, documents or things as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" does not, standing alone, waive Non-Party QUALCOMM's right to secure protection under this Order for such material. Upon discovery of an inadvertent failure to designate, Non-Party QUALCOMM may notify the Receiving Party in writing that the material is to be designated as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE". Upon receipt of such notice, the Receiving Party must make reasonable efforts to assure

that the material is treated in accordance with the terms of this Order, subject to the right to challenge the propriety of such designation(s). Non-Party QUALCOMM shall provide substitute copies of documents bearing the confidentiality designation.

Filing Designated Material

31. Without written permission from Non-Party QUALCOMM or an Order from the United States International Trade Commission secured after appropriate notice to all interested persons, a Party may not file in the public record in this Litigation any Designated Material, and must adhere to and comply with all applicable rules and regulations available to maintain the confidentiality of any Designated Material included in any filing or hearing in this Litigation, including but not limited to all protections afforded confidential information under 19 CFR § 210.5 and Ground Rule 9.2 in Order No. 2.

Challenges to Confidentiality Designations

32. Non-Party QUALCOMM will use reasonable care when designating documents or information as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE". Nothing in this Order shall prevent a Receiving Party from contending that any or all documents or information designated as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" have been improperly designated. A Receiving Party may, at any time, request that Non-Party QUALCOMM cancel or modify the confidentiality designation with respect to any document or information contained therein.

33. A Receiving Party shall not be obligated to challenge the propriety of a "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" designation at the time made, and the failure to do so shall not preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on counsel for Non-Party QUALCOMM, and shall identify particularly the documents or information that the Receiving Party contends should be differently designated. The parties shall use their best efforts to resolve promptly and informally such disputes in

accordance with all applicable rules. If agreement cannot be reached, the Receiving Party shall request that the United States International Trade Commission cancel or modify a "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" designation.

Designated Material Subpoenaed or Ordered Produced In Other Litigation

34. If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any information, documents or things designated in this Litigation as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE", the Receiving Party must so notify Non-Party QUALCOMM, in writing (by fax and email) promptly, and in no event more than ten (10) calendar days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The Receiving Party also must immediately inform, in writing, the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or order is subject to this Supplemental Protective Order. In addition, the Receiving Party must deliver a copy of this Supplemental Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Supplemental Protective Order and to afford Non-Party QUALCOMM an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. Non-Party QUALCOMM shall bear the burdens and the expenses of seeking protection in that court of Designated Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Litigation to disobey a lawful directive from another court.

Unauthorized Disclosure Of Designated Material

35. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing Non-Party QUALCOMM of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Designated Material,

(c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A. Nothing in these provisions should be construed as limiting Non-Party QUALCOMM's right to seek remedies for a violation of this Order.

Duration

36. Even after the termination of this Litigation, the confidentiality obligations imposed by this Order shall remain in effect until Non-Party QUALCOMM agrees otherwise in writing or a court order otherwise directs. The Court shall retain jurisdiction to enforce the terms of this Supplemental Protective Order after the dismissal of this Action. Complainant and Respondents agree that any order of dismissal of the Action as to any or all parties shall include a specific provision that the Court shall retain jurisdiction to enforce this Supplemental Protective Order following dismissal. Complainant, Respondents and any individual who receives any Designated Material consent to the personal jurisdiction of the Court for that purpose.

Final Disposition

37. Unless otherwise ordered or agreed in writing by Non-Party QUALCOMM, within sixty (60) days of the termination of all of this Litigation, whether through settlement or final judgment (including any and all appeals therefrom), each Receiving Party, including outside counsel for each Receiving Party, will destroy all Material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" and "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" produced by Non-Party QUALCOMM in this Litigation, as well as all work product, pleadings, motion papers, legal memoranda, correspondence, trial transcripts and trial exhibits admitted into evidence containing information from Designated Material ("derivations") and all copies thereof, with the exception of copies stored on back up tapes or other disaster recovery media. Within sixty (60) days of the date of settlement or final judgment, each Receiving Party shall serve Non-Party QUALCOMM with a certification stating that it, including its outside counsel, has complied with its obligations under this paragraph. With

respect to any copy of Material of Non-Party QUALCOMM or derivation thereof that remains on back-up tapes and other disaster storage media of a Receiving Party, neither the Receiving Party nor its consultants, experts, counsel or other party acting on its behalf shall make copies of any such information available to any person for any purpose other than backup or disaster recovery unless compelled by law and, in that event, only after thirty (30) days prior notice to Non-Party QUALCOMM or such shorter period as required by court order, subpoena, or applicable law.

Miscellaneous

38. Any of the notice requirements herein may be waived, in whole or in part, but only by a writing signed by the Counsel of Record for the Party or Non-Party QUALCOMM against whom such waiver will be effective.

39. This Order is entered without prejudice to the right of any Party or Non-Party QUALCOMM to apply to the United States International Trade Commission at any time for modification of this Order, when convenience or necessity requires. Nothing in this Order abridges the right of any person to seek to assert other objections. No Party or Non-Party QUALCOMM waives any right it otherwise would have to object to disclosing or producing any information, documents, or things on any ground not addressed in this Supplemental Protective Order. Similarly, no Party or Non-Party QUALCOMM waives any right to object on any ground to the use in evidence of any of the material covered by this Supplemental Protective Order. The United States International Trade Commission shall take appropriate measures to protect Designated Material at trial and any hearing in this Litigation.

40. This Order shall not diminish any existing obligation or right with respect to Designated Material, nor shall it prevent a disclosure to which Non-Party QUALCOMM consents in writing before the disclosure takes place.

41. The United States International Trade Commission is responsible for the interpretation and enforcement of this Supplemental Protective Order. All disputes concerning Designated Material produced under the protection of this Supplemental Protective Order shall

be resolved by the United States International Trade Commission. Every individual who receives any Designated Material agrees to subject himself or herself to the jurisdiction of the United States International Trade Commission for the purpose of any proceedings related to performance under, compliance with, or violation of this Order.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
BY SUPPLEMENTAL PROTECTIVE ORDER GOVERNING
DISCOVERY FROM NON-PARTY QUALCOMM IN THIS LITIGATION

I, _____ [print or type
full name], state: My business

address is _____;

1. My present employer is _____

2. My present occupation or job description is _____

3. I have been informed of and have reviewed the Supplemental Protective Order Governing Discovery From Non-Party QUALCOMM In This Litigation ("Supplemental Protective Order") entered in this Litigation, and understand and agree to abide by its terms. I agree to keep confidential all information provided to me in the matter of *Certain Electronic Imaging Devices*, Investigation No. 337-TA-850, in accordance with the restrictions in the Supplemental Protective Order, and to be subject to the authority of the United States International Trade Commission in the event of any violation or dispute related to this Supplemental Protective Order.

4. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____

[Printed name]

[Signature]

EXHIBIT B

CERTIFICATION OF CONSULTANT RE SUPPLEMENTAL PROTECTIVE ORDER GOVERNING DISCOVERY FROM NON-PARTY QUALCOMM

I, _____ [print or type full name],
of _____

_____ am not an employee of the Party who retained me or of a competitor of any Party or Non-Party QUALCOMM and will not use any information, documents, or things that are subject to the Supplemental Protective Order Governing Discovery From Non-Party QUALCOMM ("Designated Material") in the matter *Certain Electronic Imaging Devices*, Investigation No. 337-TA-850, to which I have access for any purpose other than this Litigation. I agree not to perform hardware or software development work or product development work directly or indirectly intended for commercial purposes substantially related to the particular technology or information disclosed in the Designated Material to which I have access, from the time of receipt of such material through and including the first to occur of (i) the date I cease to represent the Receiving Party or respective client in this case or (ii) the date I cease to have access to any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE." I understand that this shall not preclude me from consulting in future litigation, so long as such consulting does not involve hardware or software development work directly or indirectly intended for commercial purposes substantially related to the particular technology or information in the Designated Material to which I have access.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

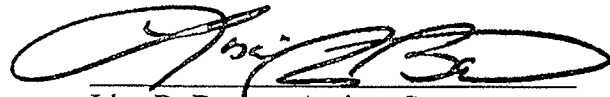
Executed on _____

[Printed name]

[Signature]

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated on **September 18, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FlashPoint Technology, Inc.:

Goutam Patnaik, Esq.
PEPPER HAMILTON LLP
600 Fourteenth Street, NW
Washington, DC 20005-2004

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

On Behalf of Respondents HTC Corporation and HTC America, Inc.:

John P. Schnurer, Esq.
PERKINS COIE LLP
11988 El Camino Real, Suite 200
San Diego, CA 92130

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

On Behalf of Respondents Pantech Co., Ltd and Pantech Wireless, Inc.:

Alan A. Wright, Esq.
H. C. PARK & ASSOCIATES PLC
8500 Leesburg Pike, Suite 7500
Vienna, VA 22182

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

On Behalf of Respondents Huawei Technologies Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA):

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() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Certificate of Service – Page 2

**On Behalf of Respondents ZTE Corporation and ZTE (USA)
Inc.:**

Steven A. Moore, Esq.
GOODWIN PROCTER LLP
4365 Executive Drive, 3rd Floor
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Public:

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Kenneth Clair
THOMSON WEST
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() Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC IMAGING
DEVICES**

Inv. No. 337-TA-850

**ORDER NO. 9: GRANTING IN PART AND DENYING IN PART
COMPLAINANT'S MOTION TO AMEND THE PROTECTIVE
ORDER**

(October 02, 2012)

On August 23, 2012, complainant FlashPoint Technology, Inc., ("FlashPoint") filed a motion to supplement the protective order as it relates to source code. (Motion Docket No. 850-004). On September 4, 2012, Respondents HTC Corporation and HTC America, Inc. (collectively, "HTC") filed an opposition to FlashPoint's Motion and proposed their own amendment to the protective order. On September 7, 2012, FlashPoint filed a Motion for Leave to Reply to HTC's Opposition. (Motion Docket No. 805-005.) On September 10, 2012, HTC filed an Opposition to FlashPoint's Motion for Leave to Reply.

FlashPoint's Compliance with G.R. 3.2

The parties dispute whether good cause exists for FlashPoint's reply. FlashPoint argues that good cause exists for its reply because it was necessary to address certain factual inaccuracies and mischaracterizations in HTC's opposition. (Reply at 1.) HTC argues that it did not misrepresent the facts, and that FlashPoint is using the reply to merely re-argue its motion. (Reply Opp. at 2.) The ALJ agrees with FlashPoint, thus FlashPoint's motion for Leave to Reply is hereby GRANTED.

In the context of HTC's G.R. 3.2 argument, HTC only mentioned FlashPoint's August 22 threat to file its motion in order to argue it was only given a single day's notice. (Opp. at 5.) However, as FlashPoint highlights in its reply, FlashPoint threatened HTC with this motion in writing to on August 17. (Reply at 3.) It was not until HTC's opposition to the reply that HTC chose to recognize the August 17 communication. (Reply Opp. at 3, FN 5.) Thus, it appears that HTC at least selectively disclosed the facts relevant to its G.R. 3.2 argument. Therefore, the ALJ finds good cause for filing the reply.

Furthermore, the ALJ finds that FlashPoint has satisfied G.R. 3.2. FlashPoint argues that G.R. 3.2 only requires that the parties make reasonable, good-faith efforts to contact and resolve disputes without resorting to motions practice. (Reply at 5.) FlashPoint further argues that discussions and agreements between the parties subsequent to the August 17 notice should not invalidate that notice. (Reply at 4.) HTC argues that the August 17 notice was nullified because FlashPoint did not follow through on its threat to file the motion on August 20. (Reply Opp. at 3, FN. 5) The ALJ agrees with FlashPoint. It is true that FlashPoint failed to follow through on its threat to file the motion on August 20. However, FlashPoint's decision to entertain further negotiations with HTC is what delayed the filing date to August 23. (Reply at 4.) The ALJ finds that FlashPoint has made reasonable, good-faith efforts to resolve the dispute at least since August 17 and that FlashPoint satisfied the requirements of G.R. 3.2.

The location of source code computer for review

FlashPoint proposes an amendment to ¶18(C)(iii) which would require HTC to make a source code computer available for attorney review in Perkins Coie's Washington, D.C. office. (Mot. at 8-9.) HTC's proposed amendment to ¶18(C)(iii) would require HTC to provide a source

code computer available for attorney review in Perkins Coie's San Diego, CA office, subject to ¶18(C)(xii)(6). (Opp. at 2-3.) FlashPoint admits it is amenable to storing one source code computer in San Diego, CA. (Mot. at 9.) Thus, a source code computer shall be stored in San Diego, CA. The ALJ will address HTC's proposed amendment to ¶18(C)(xii)(6) below.

Whether the burden placed on HTC by providing two source code computers is outweighed by FlashPoint's interest in more efficient discovery.

FlashPoint proposes an amendment to ¶18(C)(xii)(6) that would require HTC to provide a source code computer during depositions of expert and 30(b)(6) witnesses. (Mot. at 7-8.) HTC proposes an amendment to ¶18(C)(xii)(6) that, when read in conjunction with ¶18(C)(iii), would merely require HTC to make a source code computer available in San Diego, CA for review, and then ship that same computer to Taiwan for the first deposition where it would remain for the duration of the investigation. (Opp. at 3-4.)

The ALJ finds that FlashPoint's interest in more efficient discovery outweighs the economic burden and security concerns that HTC alleges may be realized if a second source code computer is produced. HTC's security concerns are primarily undercut by the fact that the depositions and the second source code computer will be at an HTC facility in Taiwan. (Reply at 7.) Furthermore, the ALJ finds that the time and expense that FlashPoint would incur traveling back and forth from Taiwan for post-deposition review would be unduly burdensome and outweighs the cost to HTC to provide a second copy of the source code, especially on the fast discovery timeline provided at the ITC.

Source Code Review Log Requirements

FlashPoint and HTC primarily disagree about the timing of the disclosure of the log. FlashPoint stated it was amenable to HTC's proposed amendment, except that FlashPoint

proposes a post-decision disclosure time. (Mot. at 10.) FlashPoint suggests that post-decision disclosure is appropriate so that HTC could not use the information to improperly impeach FlashPoint experts during the investigation. (Mot. at 10.)

The ALJ finds that the time-specific access information should be provided in the log as proposed by HTC.¹ FlashPoint does not cite any authority for the position that using the log information to impeach witnesses is improper. Moreover, the ALJ finds that the alleged abuse and prejudice FlashPoint fears is outweighed by the potential relevance of the information, however minimal, to the credibility of expert witnesses.

For the reasons set forth above, Order No. 1 is hereby amended to add ¶18 as set forth below:

18. Source Code. A supplier may designate documents, information, or things as “CONFIDENTIAL SOURCE CODE—ATTORNEY’S EYES ONLY INFORMATION,” which shall mean Litigation Material of a supplier or of any non-parties that a supplier is permitted to produce in this Investigation that constitutes or contains non-public Source Code.

A. “Source Code” includes human-readable programming language text that defines software, firmware, or electronic hardware descriptions. Source Code also includes source code files, which are text files containing source code. These include, but are not limited to, files containing source code written in “C,” “C++,” assembler, VHDL, Verilog, and digital signal processor (“DSP”) programming languages, as well as “.include files,” “make” files, link files, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. Source Code does not include binary executable files and object code files, nor does it include tools such as compilers or linkers.²

¹ The ALJ notes that the terms of ¶18(C)(v) appear to require logging the amount of time “Outside Litigation Counsel” have spent reviewing source code, which could be considered work product. By adopting ¶18(C)(v) as proposed by HTC, the ALJ does not consider any work product privilege waived (absent some affirmative waiver of such privilege). In other words, the requirement that the amount of time spent reviewing source code be produced during discovery is limited to the amount of time experts or any other witnesses have spent reviewing source code and does extend to any work covered under the work product privilege.

² The parties agree that binary executable files and object code files do not need to be produced and that to the extent binary executable files and object code files are produced, they shall be afforded the same protection as other “Source Code” defined in this section.

B. Materials designated as "CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION," shall only be reviewable by SOURCE CODE QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following: (1) Outside Litigation Counsel as necessarily incident to the litigation of this Investigation; (2) personnel at document duplication, coding imaging or scanning service establishments retained by, but not regularly employed by, Outside Litigation Counsel, but only as necessarily incident to depositions and trial in the litigation of this Investigation; (3) the Commission, the Administrative Law Judge, the Commission Investigative Staff, Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order; (4) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and (5) Qualified Consultants and/or Qualified Experts in this Investigation (under paragraph 11 of this Protective Order in this Investigation). However, Qualified Consultants and/or Qualified Experts may only review CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION after being expressly identified to the supplier as seeking access to CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION. If the receiving party wishes an already identified Qualified Consultant or Qualified Expert to receive CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION it must re-comply with the provisions of paragraph 11 of this Protective Order in this Investigation, including allowing the supplier an opportunity to object to this Qualified Consultant or Qualified Expert receiving CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION, and identify the proposed Qualified Consultant or Qualified Expert as seeking access to CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION. If a supplier objects to a Qualified Consultant or Qualified Expert receiving CONFIDENTIAL SOURCE CODE -ATTORNEY'S EYES ONLY INFORMATION, while the objection is pending pursuant to paragraph 11 of this Protective Order, supplier shall have no obligation to provide CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY INFORMATION to the Qualified Consultant or Qualified Expert until the objection is removed. All SOURCE CODE QUALIFIED PERSONS designated under paragraphs 18(B)(1), 18(B)(2), and 18(B)(5) shall agree to be bound by the terms of the Protective Order, and specifically those provisions governing SOURCE CODE QUALIFIED PERSONS before reviewing Source Code or relevant files. A receiving party may designate no more than ten (10) persons as SOURCE CODE QUALIFIED PERSONS under 18(B)(5) to review a particular supplying party's Source Code. The same person may be designated under 18(B)(5) to review the Source Code of multiple supplying parties, subject to the ten (10) person total limitation.

C. Source Code shall be provided with the following additional protections:

(i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.

(ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.

(iii) Access to each supplier's Source Code shall be provided on a "stand-alone" computer (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet, or the Internet and may not be connected to any printer (unless as otherwise permitted in this Section C) or storage device other than the internal hard disk drive of the computer). Each stand-alone computer shall be kept in the following secure locations: FlashPoint will make its Source Code available for inspection in Pepper Hamilton's Washington, D.C. office; HTC will make its Source Code available for inspection in Perkins Coie's San Diego, CA office; ZTE will make its Source Code available for inspection in its Richardson, Texas Facilities; Pantech will make its Source Code available for inspection in H.C. Park & Associate's Northern Virginia office; and Huawei will make its Source Code available for inspection in Morrison Foerster's San Diego, California office. Each stand-alone computer may also be kept at such other location as the supplying party and receiving party mutually agree. Each stand-alone secure computer may be password protected and shall have the Source Code stored on a hard-drive contained inside the computer. The supplier, at its sole discretion, may choose to waive any or all of the default requirements in this paragraph 19 for its own convenience.

(iv) The supplier shall produce Source Code in computer searchable format on the stand-alone computer. Each stand-alone computer shall, at the receiving party's request, include reasonable analysis tools appropriate for the type of Source Code. The receiving party shall provide the tools that it wishes to use to the supplier so that the supplier may install such tools on the stand-alone computers. The receiving party's Outside Litigation Counsel and/or experts may request that commercially available software tools for viewing and searching Confidential Source Code be installed on the secured computer, provided, however, that such other software tools are reasonably necessary for the receiving party to perform its review of the Confidential Source Code consistent with all of the protections herein. The receiving party must provide the supplying party with the CD or DVD containing such licensed software tool(s) at least five (5) days in advance of the date upon which the receiving party wishes to have the additional software tools available for use on the Confidential Source Code Computer. The receiving party shall not at any time use any compilers, interpreters or simulators in connection with the supplying party's Confidential Source Code.

(v) The receiving party shall make reasonable efforts to restrict its requests for access to a stand-alone computer to normal business hours, which for purposes of this Paragraph shall be

9:00 a.m. through 6:00 p.m. local time at the reviewing location on 24 hours notice pursuant to

Section C (vi) below. Notice must be given during regular business hours, and the hours that the Source Code will be made available shall not be altered based upon the timing of the notice. Upon reasonable notice from the receiving party, which shall not be less than three (3) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computers outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the reviewing location. The parties agree to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's Outside Litigation Counsel or other designated location shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this Investigation. The parties reserve their rights to request access to the Source Code at the site of any hearing or trial. The supplier may require proper identification of all SOURCE CODE QUALIFIED PERSONS before any access to a stand-alone secure computer, and each and every time a person accesses a stand-alone secure computer, the supplier may require each SOURCE CODE QUALIFIED PERSON to complete a Source Code review log maintained by the supplier's Outside Litigation Counsel identifying: (1) the person's name; (2) the date and time access began; (3) the date and time access ended.

(vi) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least seven (7) business days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to operate the stand-alone computers in order to access the produced Source Code on the stand-alone secure computers. For each initial review by a SOURCE CODE QUALIFIED PERSON, the receiving party shall give at least 36 hours notice to the supplier of such SOURCE CODE QUALIFIED PERSON'S review. For any subsequent reviews by such SOURCE CODE QUALIFIED PERSONS, the receiving party shall give at least 24 hours notice to the supplier of such review. Notice must be given during regular business hours, and the hours that the source code will be made available shall not be altered based upon the timing of the notice.

(vii) No person other than the supplier may alter, dismantle, disassemble or modify the standalone computers in any way, or attempt to circumvent any security feature of the computers. In order to verify that its Confidential Source Code has not later been altered, the supplying party may benchmark the materials to confirm that the materials have not been altered before and after they are provided but shall not install any keystroke or other monitoring software on the Confidential Source Code Computer. During the period of source code review, the stand-alone computer shall be in a secured room accessed by only SOURCE CODE QUALIFIED PERSONS and such individuals must take reasonable steps

to ensure that the screen of the stand-alone computer is in a position such that it is not viewable through any of the room's windows or doors.

(viii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone computers, except for: (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(xi)-(xii) of this Protective Order; and (2) such other uses to which the parties may agree or that the Administrative Law Judge or the Commission may order. Printing portions of Source Code that exceed 50 continuous pages or ten percent or more of the entire Source Code software release (the final executable code compiled upon an imported device) shall be rebuttably presumed to be excessive and cannot be done for a permitted purpose absent an order from the ALJ. The receiving party shall not print Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the stand-alone computer, as the parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of Source Code for review and analysis elsewhere, and that printing is permitted solely to enable use of Source Code in filings, depositions, proceedings, expert reports, and related drafts and correspondence. No outside electronic devices, including but not limited to laptop computers, USB flash drives, zip drives, cell phones, portable printers, or devices with camera functionalities shall be permitted in the same room as the stand-alone computers. The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code review room. Such supervision, however, shall not entail review of any work product generated by the receiving party, e.g., monitoring the screens of the stand-alone computers, monitoring any surface reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision by any supplier.

(ix) Any handwritten notes or other work product, created by the receiving party, reflecting CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY INFORMATION shall be marked as CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY INFORMATION and shall also be treated as "Source Code" pursuant to this paragraph.

(x) Nothing may be removed from the stand-alone computers, either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(xi)-(xii) of this Protective Order; and (2) such other uses to which the parties may agree or that the Administrative Law Judge or the Commission may order.

(xi) All original printed pages of Source Code shall be retained by the supplying party. At the request of the receiving party, the supplier shall within

three (3) business days (or sooner if needed for a deposition or filing) provide one (1) hard copy print out of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. During the review of Source Code, if a receiving party believes in good faith that contemporaneous access to print-outs of particular pages of the Source Code is necessary to further the Source Code review, the receiving party may request and the supplier shall promptly provide one (1) hard copy print out of such pages. All printed copies of such Source Code shall be returned to the supplying party after such contemporaneous access by the receiving party. The receiving party shall limit its requests for contemporaneous access to print outs to those pages actually necessary to conduct the Source Code review. If the supplier objects to the production of the requested Source Code because the request is excessive, it shall state its objection within the allotted three (3) business days pursuant to this paragraph. For purposes of this paragraph, printed portions of Source Code that exceed 50 continuous pages or ten percent or more of the entire Source Code software release (the final executable code compiled upon an imported device) shall be rebuttably presumed to be excessive and cannot be done for a permitted purpose absent an order from the ALJ. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve it the parties will raise it with the ALJ.

(xii) Hard copy print outs of Source Code shall be provided on bates numbered, watermarked, and colored paper clearly labeled CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION on each page and shall be maintained by the receiving party's Outside Litigation Counsel or SOURCE CODE QUALIFIED PERSONS in a secured locked area. The receiving party may not mail printed copies of Source Code or otherwise place printed copies of Source Code in the custody of individuals other than SOURCE CODE QUALIFIED PERSONS. The receiving party may also temporarily keep the print outs at: (a) the Commission for any proceedings(s) relating to the Source Code, for the dates associated with the proceeding(s); (b) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (c) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:

1. For depositions, upon election by the receiving party, it may make three additional copies of the printed Source Code for use at depositions (fact/expert), and only such printed copies may be used at the depositions and any hearing or trial in this Action. Further, to the extent that the receiving party, pursuant to section 18(C)(xi) requests hard copy print outs of Source Code within five (5) days prior to the deposition, the receiving

party shall have the opportunity to request copies of such Source Code to be provided at the deposition by the supplying party. All copies are to be printed on watermarked, color paper and clearly labeled **CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION** on each page. To the extent that any Source Code is printed out for use at a deposition, and such Source Code is marked as an exhibit, the marked original exhibit shall be maintained by the supplying party until trial. All other copies used at a deposition shall be destroyed or returned to the supplying party, except that this provision does not prevent the attorney taking the deposition from bringing personally to the deposition a Qualified Expert/Consultant hard copy provided under section 18(C)(xii)(4) that contains work product notes for the taking of the deposition, with such attorney retaining such copy at the end of the deposition.

2. The receiving party is permitted to make up to five (5) additional hard copies for the Commission in connection with a Commission filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered. To the extent portions of Source Code are quoted in a Commission filing, the amount of consecutive lines of Source Code quoted shall not exceed 45 lines per quote. For purposes of this paragraph, comments shall not be considered to be Source Code. In addition, either (1) the entire document will be stamped and treated as **CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION**; or (2) those pages containing quoted Source Code will be separately stamped and treated as **CONFIDENTIAL SOURCE CODE— ATTORNEY'S EYES ONLY INFORMATION**. All copies are to be printed on watermarked paper.

3. With respect to briefs that contain Source Code quotes, each party shall redact from the service copy of their brief all exhibits containing the cited Source Code.

4. The receiving party is permitted to make one additional hard copy for each of its qualified Experts and/or Qualified Consultants who are **SOURCE CODE QUALIFIED PERSONS**, but not to exceed a total of five (5) copies. All copies are to be printed on watermarked, color paper and maintained by such Qualified Expert or Qualified Consultant in a secured, locked area as provided by the terms of this agreement.

5. Electronic copies of Source Code may only be made to be included in documents which, pursuant to the Commission's rules, procedures and order(s), cannot be filed or served in hard copy form and must be filed or served electronically. Only the necessary amount of electronic copies to effectuate such filing or service may be stored on any receiving party

server, hard drive, or other electronic storage device at any given time. After any such electronic filing or service, the receiving party shall delete all electronic copies from all receiving party electronic storage devices.

(6) The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone computer during depositions of expert and 30(b)(6) witnesses who would otherwise be permitted access to such Source Code, and such depositions shall take place at a location to be determined by the supplying party. The receiving party shall make such request in the notice for deposition or in each topic in a 30(b)(6) deposition where applicable. The supplying party shall be required to make only one stand-alone computer available under this provision. Accordingly, the receiving party shall not schedule concurrent depositions requiring the stand-alone computer. In addition, the receiving party bears the cost of all licenses for the search tools on such stand-alone computer, if any, which the supplying party shall promptly load on the stand-alone computer upon receipt from the receiving party.

(xiii) Nothing in this Protective Order shall be construed to limit how a supplier may maintain material designated as CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION.

(xiv) Outside Litigation Counsel for the receiving party with custody of CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION shall maintain a Source Code log containing the following information: (1) the identity of each person granted access to the CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION; (2) the first date on which such access was granted; (3) the number of copies of code or technical files or software comments made by the receiving party; (4) for each given review day, the date and time access began; and (5) for each given review day, the date and time access ended. Outside Litigation Counsel for the receiving party will produce, upon request, each such Source Code log to the supplier within twenty (20) days of the final determination of the Investigation.

(xv) Upon printing any such portion of Source Code, the receiving party shall log the location of the electronic file(s) that was/were printed such that the electronic file(s) may be readily located on the stand-alone computer, unless the location, in its entirety, of the electronic file(s) is included in the header or footer of the printed pages. Such logging may include, but is not limited to, complete filenames, directory paths, version numbers, and revision numbers. The receiving party shall provide this log to the supplier at the end of each review session. The receiving party's failure to adequately log the location of the file(s) it prints shall be at least one non-exclusive ground on which the supplier may object and properly refuse to produce the printed pages.

(xvi) Access to and review of the Source Code shall be strictly for the purpose of investigating the claims and defenses at issue in this Investigation. No person shall review or analyze any Source Code for purposes unrelated to this Investigation, nor may any person use any knowledge gained as a result of reviewing Source Code in this Investigation in any other pending or future dispute, proceeding, patent prosecution, patent reexamination, or litigation.

(xvii) Upon final termination of this Investigation (including all appeals) or settlement, each recipient shall immediately destroy all printed pages of the Source Code and any notes or other work product reflecting Source Code and certify destruction thereof to the supplier promptly.

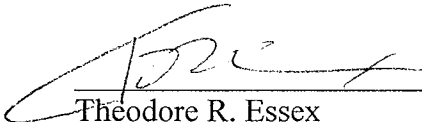
(xviii) Only persons who have complied with Paragraph 4 of the Protective Order, subject to the procedures of this Paragraph 18 of the Protective Order, may have access to the supplier's Source Code. No employee or agent of the recipient party will be approved to view the supplier's Source Code (whether in electronic form or otherwise).

19. No prejudice. The private parties agree that entering into this Protective Order Addendum is without prejudice to any party's rights to propose, request or otherwise move for different provisions relating to Source Code production in the Investigation or any other investigation, action or proceeding. Nothing herein shall be deemed a waiver of a party's right to object to the production of Source Code. Absent a subsequent and specific court or agency order, nothing herein shall obligate a party to breach any non-party license agreement relating to such Confidential Source Code. The parties further acknowledge that some or all of the Confidential Source Code may be owned by non-parties and outside a party's possession, custody or control. Nothing herein shall be deemed a waiver of any non-party's right to object to the production of Confidential Source Code or object to the manner of any such production.

20. Notwithstanding the provisions of paragraphs 3, 4, and 5 of the Protective Order, absent the written consent of the supplier, any person who reviews or otherwise learns the substance of a third party's or Respondent's confidential business information or a third party's or Respondent's Source Code (together, "Protected Information") shall not be involved in the prosecution of: (i) the patents asserted in this action; (ii) any continuations, continuations in part, reissues, or divisionals that derive in whole or in part from the patents asserted in this action; (iii) any patent assigned to the Complainant; (iv) any patent related to the subject matter of the patents-in-suit and assigned to a party or an entity affiliated with, owned by, or controlled by a party; or (v) any patents related to the subject matter of the patents-in-suit assigned to any entity with any degree of common ownership, any degree of common control, or any degree of common employees as FlashPoint at any point in time. Absent the written consent of the supplier, any person who reviews or otherwise learns the substance of Protected Information shall not use the Protected Information when prosecuting patents or

patent applications relating to the subject matter of the patents-in-suit, before any foreign or domestic agency, including the United States Patent and Trademark Office. For purposes of this paragraph, "prosecution" includes, without limitation: (i) the drafting or amending of patent claims, or the supervising of the drafting or amending of patent claims; (ii) participating in or advising on any reexamination or reissue proceeding on behalf of an owner of the patent that is the subject of the reexamination or reissue proceeding; and (iii) advising any client concerning strategies for obtaining or preserving patent rights in the subject matter of the patents-in-suit before the United States Patent and Trademark Office or other similar foreign government or agency. Notwithstanding the preceding, for purposes of this paragraph, "prosecution" does not include (i) any acts taken to discharge the duty of candor and good faith in any proceeding related to the asserted patents or the technical subject matter of the asserted patents; (ii) participating in or advising on any reexamination or reissue proceeding by Complainant's lawyers, experts, or agents with respect to any patents in which any Respondent has any interest, or participating in or advising on any reexamination or reissue proceeding (except for participating in or advising on, directly or indirectly, claim drafting or amending claims) by any of a Respondent's lawyers, experts, or agents with respect to any patents in which that Respondent has any interest; or (iii) participating in or advising on any reexamination or reissue proceeding by any of a Respondent's lawyers, experts, or agents with respect to any patents in which Complainant has any interest. Complainant's counsel may advise the Complainant, in the context of this investigation, regarding prior art and invalidity arguments raised in this investigation, and such advising does not constitute participating in or advising on any reexamination or reissue proceeding. This prohibition on patent prosecution shall begin when an individual subscribes to the Protective Order in this Investigation and shall end two (2) years after the final resolution of this Investigation (including all appeals). This prosecution bar (i) is personal to the person subscribing to the Protective Order in this Investigation and shall not be imputed to any other person or entity and (ii) shall not be triggered by an attorney's reviewing or otherwise learning the substance of his or her client's Protected Information.

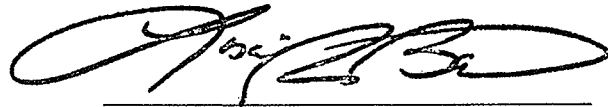
SO ORDERED.



Theodore R. Essex
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated on **October 3, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FlashPoint Technology, Inc.:

Goutam Patnaik, Esq.
PEPPER HAMILTON LLP
600 Fourteenth Street, NW
Washington, DC 20005-2004

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

On Behalf of Respondents HTC Corporation and HTC America, Inc.:

John P. Schnurer, Esq.
PERKINS COIE LLP
11988 El Camino Real, Suite 200
San Diego, CA 92130

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

On Behalf of Pantech Co., Ltd and Pantech Wireless, Inc.:

Alan A. Wright, Esq.
H. C. PARK & ASSOCIATES PLC
8500 Leesburg Pike, Suite 7500
Vienna, VA 22182

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

On Behalf of Huawei Technologies Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA):

Alexander J. Hadjis, Esq.
MORRISON & FOERSTER LLP
2000 Pennsylvania Ave., NW, Suite 6000
Washington, DC 20006

☐ Via Hand Delivery
☐ Via Overnight Delivery
☒ Via First Class Mail
☐ Other: _____

Certificate of Service – Page 2

On Behalf of ZTE Corporation and ZTE (USA) Inc.:

Steven A. Moore, Esq.
GOODWIN PROCTER LLP
4365 Executive Drive, 3rd Floor
San Diego, CA 92121-2125

() Via Hand Delivery
() Via Overnight Delivery
(\) Via First Class Mail
() Other: _____

Public:

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LEXIS-NEXIS
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Miamisburg, OH 45342

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() Via Overnight Delivery
(\) Via First Class Mail
() Other: _____

Kenneth Clair
THOMSON WEST
1100 13th Street, NW, Suite 200
Washington, DC 20005

() Via Hand Delivery
() Via Overnight Delivery
(\) Via First Class Mail
() Other: _____

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC IMAGING
DEVICES**

Inv. No. 337-TA-850

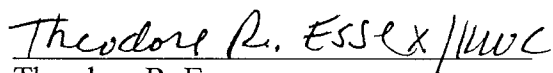
**ORDER NO. 11: GRANTING UNOPPOSED MOTION FOR SUPPLEMENTAL
PROTECTIVE ORDER GOVERNING DISCOVERY OF NON-
PARTY APPLE, INC.'S MATERIAL**

(October 31, 2012)

On October 25, 2012, complainant FlashPoint Technology, Inc. ("FlashPoint") filed a motion for a supplemental protective order governing discovery from non-party Apple, Inc. ("Apple") in order to provide enhanced confidentiality protections for the disclosure of their materials. (Motion Docket No. 850-010.) The motion states that respondents do not oppose this motion. As of the date of this order, no responses have been received.

There being no opposition and good cause having been shown Order No. 1 (Protective Order) is hereby supplemented to add the following provisions as set forth in Attachment A.

SO ORDERED.


Theodore R. Essex
Administrative Law Judge

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

Before the Honorable Theodore R. Essex
Administrative Law Judge

In the Matter of: CERTAIN ELECTRONIC IMAGING DEVICES	Investigation No. 337-TA-850
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**DISCOVERY MATERIAL DESIGNATED AS
“APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY”**

Additional categories of documents beyond those addressed in the Protective Order (Order Nos. 1, 8, and 9) shall be provided with respect to production by non-party Apple. Accordingly, documents, source code, or schematics that are produced or submitted by non-party Apple in this investigation that are designated “APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY” shall be subject to the following restrictions of this Supplemental Protective Order, in addition to the provisions of the Protective Orders:

1. DEFINITIONS

(a) “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably necessary to disclose the information for this litigation

(b) “Party” means any party to this case, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

(c) “Apple Source Code” means Apple’s computer code, scripts, assembly, binaries, object code, source code listings and descriptions of source code, object code listings

and descriptions of object code, and Hardware Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip.

(d) “Receiving Party” means any Party who receives Apple Source Code from Apple.

2. ACCESS TO APPLE SOURCE CODE

(a) Nothing in this Order shall be construed as a representation or admission that Apple Source Code is properly discoverable in this action, or to obligate any Party to produce any Apple Source Code.

(b) Unless otherwise ordered by the Court, Discovery Material designated as “APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY” shall be subject to the provisions set forth in Paragraph 3 below, and may be disclosed, subject to Paragraph 3 below, solely to:

(i) The Receiving Party’s Outside Counsel, provided that such Outside Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff;

(ii) Any outside expert or consultant retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions of this Supplemental Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time of retention to become an officer, director or employee of a Party or of

a competitor of a Party; (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party; and (d) no unresolved objections to such disclosure exist after proper notice has been given to all Parties as set forth in the Protective Order;

(iii) Court reporters, stenographers and videographers retained to record testimony taken in this action;

(iv) The Court, jury, and court personnel;

(v) Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order; and

(vi) Any other person with the prior written consent of the Producing Party.

(c) Discovery Material designated as "APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY" shall not be made available to any person designated in paragraph 2(b)(i) and (ii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 2(b) and (iii) to utilize such confidential business information solely for purposes of this Investigation.¹

3. DISCLOSURE AND REVIEW OF APPLE SOURCE CODE

(a) Any Apple Source Code that is produced by Apple Inc. will be made available for inspection at the San Francisco office of its outside counsel, Kirkland & Ellis LLP,

¹ Necessary secretarial and support personnel assisting counsel need not sign onto the protective order themselves because they are covered by counsel's signing.

or any other location mutually agreed by the Parties. Apple Source Code will be made available for inspection between the hours of 8 a.m. and 6 p.m. on business days (i.e., weekdays that are not Federal holidays), although the Parties will be reasonable in accommodating reasonable requests to conduct inspections at other times.

(b) Prior to the first inspection of any requested Apple Source Code, the Receiving Party shall provide thirty-six (36) hours notice of the Apple Source Code that it wishes to inspect. The Receiving Party shall provide twenty-four (24) hours notice prior to any additional inspections.

(c) Apple Source Code that is designated "APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY" shall be produced for inspection and review subject to the following provisions, unless otherwise agreed by the Producing Party:

(i) All Apple Source Code shall be made available by the Producing Party to the Receiving Party's outside counsel and/or experts in a secure room on a secured computer without Internet access or network access to other computers and on which all access ports have been disabled (except for one printer port), as necessary and appropriate to prevent and protect against any unauthorized copying, transmission, removal or other transfer of any Apple Source Code outside or away from the computer on which the Source Code is provided for inspection (the "Source Code Computer" in the "Source Code Review Room"). The Source Code Computer shall be equipped with OS X and Apple shall install the following tools that are sufficient for viewing and searching the code produced, on the platform produced: XCode 3.2.6, TextEdit, BBEdit, Text Wrangler, and SlickEdit. The Receiving Party's outside counsel and/or experts may request that commercially available software tools for viewing and searching Apple

Source Code be installed on the secured computer, provided, however, that (a) the Receiving Party possesses an appropriate license to such software tools; (b) Apple approves such software tools; and (c) such other software tools are reasonably necessary for the Receiving Party to perform its review of the Source Code consistent with all of the protections herein. The Receiving Party must provide Apple with the request for additional software tool(s) at least five (5) days in advance of the date upon which the Receiving Party wishes to have the additional software tools available for use on the Source Code Computer.

(ii) No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.

(iii) The Receiving Party's outside counsel and/or experts shall be entitled to take notes relating to the Source Code but may not copy the Apple Source Code into the notes and may not take such notes electronically on the Source Code Computer itself or any other computer.

(iv) Apple may visually monitor the activities of the Receiving Party's representatives during any Source Code review, but only to ensure that no unauthorized electronic records of the Apple Source Code and no information concerning the Apple Source Code are being created or transmitted in any way.

(v) No copies of all or any portion of the Apple Source Code may leave the room in which the Apple Source Code is inspected except as otherwise provided herein. Further, no other written or electronic record of the Apple Source Code is permitted except as otherwise provided herein. Apple shall make available a laser printer with commercially reasonable printing speeds for on-site printing during inspection of the Apple

Source Code. The Receiving Party may print limited portions of the Apple Source Code only when necessary to prepare court filings or pleadings or other papers (including a testifying expert's expert report). Any printed portion that consists of more than fifty (50) pages of a continuous block of Source Code shall be presumed to be excessive, and the burden shall be on the Receiving Party to demonstrate the need for such a printed copy. The Receiving Party shall not print Apple Source Code in order to review blocks of Apple Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Apple Source Code electronically on the Source Code Computer, as the Parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of code for review and analysis elsewhere, and that printing is permitted only when necessary to prepare court filings or pleadings or other papers (including a testifying expert's expert report). Upon printing any such portions of Apple Source Code, the printed pages shall be collected by Apple. Apple shall Bates number, copy, and label "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" any pages printed by the Receiving Party. Within three (3) business days (with reasonable efforts to provide sooner if needed for a deposition or filing), Apple shall either (i) provide one copy set of such pages to the Receiving Party or (ii) inform the Requesting Party that it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after meeting and conferring, Apple and the Receiving Party cannot resolve the objection, the Receiving Party shall be entitled to seek a Court resolution of whether the printed Apple Source Code in question is narrowly tailored and was printed for a permitted purpose. The burden shall be on the Receiving Party to demonstrate that such printed portions are no more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere.

The printed pages shall constitute part of the Apple Source Code produced by the Producing Party in this action.

(vi) All persons who will review Apple's Source Code on behalf of a Receiving Party, including members of a Receiving Party's outside law firm, shall be identified in writing to the Producing Party at least five (5) days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any other disclosure required under this Order. All persons viewing Apple Source Code shall sign on each day they view Apple Source Code a log that will include the names of persons who enter the locked room to view the Apple Source Code and when they enter and depart. The Producing Party shall be entitled to a copy of the log upon one (1) day's advance notice to the Receiving Party. Proper identification of all authorized persons shall be provided prior to any access to the secure room or the computer containing Source Code. Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States, by the government of the United States, or by the nation state of the authorized person's current citizenship. Access to the secure room or the Source Code Computer may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification.

(vii) Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the Receiving Party's outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room. Apple shall not be responsible for any items left in the room following each inspection session, and the Receiving Party shall have no expectation of confidentiality for any items left in the room following each inspection session without a prior agreement to that effect.

(viii) Other than as provided above, the Receiving Party will not copy, remove, or otherwise transfer any Apple Source Code from the Source Code Computer including, without limitation, copying, removing, or transferring the Apple Source Code onto any recordable media or recordable device. The Receiving Party will not transmit any Apple Source Code in any way from the Producing Party's facilities or the offices of its outside counsel of record.

(ix) The Receiving Party's outside counsel of record may make no more than three (3) additional paper copies of any portions of the Apple Source Code, not including copies attached to court filings or used at depositions, and shall maintain a log of all paper copies of the Apple Source Code. The log shall include the names of the reviewers and/or recipients of paper copies and locations where the paper copies are stored. Upon one (1) day's advance notice to the Receiving Party, the Receiving Party shall provide a copy of this log to Apple. No more than a total of ten (10) individuals identified by the receiving party shall have access to the printed portions of Apple Source Code (except insofar as such code appears in any filing with the Commission or Administrative Law Judge or expert report in this Investigation).

(x) The Receiving Party's outside counsel of record and any person receiving a copy of any Apple Source Code shall maintain and store any paper copies of the Apple Source Code at their offices in a manner that prevents duplication of or unauthorized access to the Apple Source Code, including, without limitation, storing the Apple Source Code in a locked room or cabinet at all times when it is not in use.

(xi) For depositions, the Receiving Party shall not bring copies of any printed Apple Source Code. Rather, at least five (5) days before the date of the deposition, the Receiving Party shall notify Apple about the specific portions of Source Code it wishes to use at

the deposition, and Apple shall bring printed copies of those portions to the deposition for use by the Receiving Party. Copies of Apple Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All paper copies of Apple Source Code brought to the deposition shall remain Apple's outside counsel for secure destruction in a timely manner following the deposition, except that this provision does not prevent the Receiving Party's Outside Counsel taking the deposition from bringing personally to the deposition their own hard copy of any printed Apple Source Code that contains work product notes for the taking of the deposition, with such Receiving Party's Outside Counsel retaining custody of such copy at all times.

(xii) Except as provided in this sub-paragraph, absent express written permission from Apple, the Receiving Party may not create electronic images, or any other images, or make electronic copies, of the Apple Source Code from any paper copy of Apple Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Apple Source Code to a PDF or photograph the code). Images or copies of Apple Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to submit a portion of Apple Source Code as part of a filing with the Court, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from Apple that the confidentiality protections will be adequate. If Apple agrees to produce an electronic copy of all or any portion of its Source Code or provide written permission to the Receiving Party that an electronic or any other copy needs to

be made for a Court filing, access to the Receiving Party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of Apple Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Apple Source Code under the provisions of this Order. Where the Producing Party has provided the express written permission of Apple required under this provision to create electronic copies of Apple Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion of Apple Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored. Additionally, any such electronic copies must be labeled "APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY" as provided for in this Order.

(d) Absent the written consent of Apple, any person on behalf of a Receiving Party who receives one or more items designated "APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY" shall not be involved, directly or indirectly, in any of the following activities: (i) advising on, consulting on, preparing, prosecuting, drafting, editing, and/or amending of patent applications, specifications, claims, and/or responses to office actions, or otherwise affecting the scope of claims in patents or patent applications relating to the functionality, operation, and design of digital image processing and digital imaging applications in mobile devices (generally or as described in any patent in suit), before any foreign or domestic agency, including the United States Patent and Trademark Office; and (ii) the acquisition of patents (including patent applications), or the rights to any such patents or patent applications with the right to sublicense, relating to the functionality, operation, and design of digital image processing and digital imaging applications in mobile devices (generally or as described in any

patent in suit). These prohibitions are not intended to and shall not preclude counsel from participating in reexamination proceedings on behalf of a Party challenging the validity of any patent, but are intended, inter alia, to preclude counsel from participating directly or indirectly in reexamination or reissue proceedings on behalf of a patentee. These prohibitions shall begin when access to “APPLE CONFIDENTIAL SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY” materials are first received by the affected individual, and shall end two (2) years after the final resolution of this action, including all appeals.

EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (Order No. __) and Supplemental Protective Order Regarding Apple Source Code (Order No. __) in International Trade Commission Investigation No. 850 ("Orders"). Having read and understood the terms of the Orders, I agree to be bound by the terms of the Orders and consent to the jurisdiction of the ITC for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER No. 11** has been served upon the following parties as indicated on **October 31, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FlashPoint Technology, Inc.:

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On Behalf of Huawei Technologies Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA):

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Certificate of Service – Page 2

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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC IMAGING
DEVICES**

Inv. No. 337-TA-850

**ORDER NO. 12: GRANTING IN PART COMPLAINANT'S MOTION FOR A
PROTECTIVE ORDER LIMITING DISCOVERY OF
ELECTRONICALLY AVAILABLE STORED INFORMATION**

(November 19, 2012)

On October 17, 2012, complainant FlashPoint Technology, Inc. ("FlashPoint") filed a motion pursuant to Commission Rule 210.34(a) for a protective order to limit the discovery of electronically stored information. (Motion Docket No. 850-009). On October 31, 2012, Respondent HTC Corporation and HTC America, Inc. (collectively, "HTC") filed an opposition to FlashPoint's Motion. The other Respondents, Pantech Co., Ltd., Pantech Wireless Inc., Huawei Device Co., Ltd., Huawei Device USA, Inc., ZTE Corporation, and ZTE (USA) Inc. have agreed to the proposed limitation. (Mot. at 4.) On November 7, 2012, FlashPoint filed a motion for leave to reply. (Motion Docket No. 850-012.) On November 16, 2012, HTC filed an opposition to FlashPoint's motion for leave. FlashPoint's motion for leave to reply is hereby DENIED. As of the date of this order, no other responses have been received.

FlashPoint and HTC disagree about FlashPoint's proposed limit on the number of FlashPoint custodians. (Mot. at 3.) FlashPoint proposes a limit of 15 custodians collectively for Respondents, with an option to negotiate for additional custodians if a good faith basis for such

exists. (Mot. at 3, 6) HTC proposes no limit on the number of FlashPoint custodians. (Mot. at 3.) The ALJ finds that a limit of 15 FlashPoint custodians is appropriate.¹

HTC argues that a limit on email discovery would severely prejudice its ability to prove its on-sale bar and implied license defenses. (Opp. at 7.) HTC first explains its motivation for pursuing an on-sale bar. HTC is pursuing an on-sale bar because it believes there is a relationship between the asserted patents and FlashPoint's invalidated U.S. Patent No. 6,163,816 ("the '816 patent"). The '816 patent was invalidated by an on-sale bar in ITC Investigation No. 337-TA-726 ("the 726 Investigation"). (Opp. at 5.) HTC further explains, "FlashPoint is again claiming that HTC infringes patents arising from the FlashPoint project work conducted in the 1990s, and HTC is again raising the on-sale bar...." (Opp. at 6.) Thus, it appears HTC's motivation for the on-sale bar is its suspicion that because the asserted patents and the invalidated '816 patent were related to the same project work, the asserted patents might also be subject to the on-sale bar. HTC also briefly explains the motivation for its implied license defense, namely that HTC is a customer of a licensee of FlashPoint's technology. (Opp. at 2, 15.)

In support of HTC's argument that a limit on custodians would be prejudicial, HTC argues that it already knows of more than 15 custodians relevant to its defenses. First, HTC describes the number of custodians that it knows are relevant to its on-sale defense. HTC discusses past sales activities regarding technology related to the asserted patents, and then specifies several potential custodians on correspondence related to those activities. (Opp. at 8-9.) Second, HTC explains that correspondence relevant to its implied license defense was directed to

¹ HTC argues that FlashPoint's proposal limits the number of custodians to five per respondent. (Mot. at 3.) However, FlashPoint's brief states, "Respondents would collectively be allowed to request the emails of fifteen (15) custodians..." (Mot. at 3.) Thus, even if one of the Respondents settled, the remaining Respondents would collectively be permitted fifteen custodians.

multiple potential custodians. (Opp. at 15.) Lastly, HTC explains that the asserted patents name five inventors, and that FlashPoint's interrogatory responses named an additional three potential custodians. (Opp. at 15-16.) The ALJ finds that this evidence does not warrant granting HTC unlimited discovery.

HTC's prejudice argument rests largely on the inference that there is a relationship between the asserted patents and the invalidated '816 patent such that the asserted patents were likely involved in the same sales activities. The evidence of a relationship between the asserted patents and the '816 patent is too attenuated at this point. Aside from the fact that the asserted patents and the '816 patent may have been involved in the same project work and that they relate to the same technology (which is distinct from being *related* patents), HTC has failed to set forth any other specific evidence tying the '816 patent to the asserted patents. And without more specific evidence, the evidence about sales activities is largely irrelevant to this investigation. HTC must present something more than mere suspicion based on an unrelated patent covering the same technology in a different investigation – especially in light of the significant relief that it seeks. Moreover, the mere fact that HTC *may* discover an on-sale bar does not outweigh the undue burden and expense of unlimited discovery.²

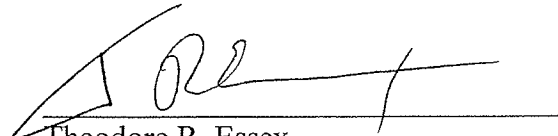
Even if the ALJ considers the additional custodians that HTC describes related to its implied license defense and otherwise, the ALJ is confident that given 15 custodians, HTC will either find the information it suspects, or find enough information to request additional

² HTC's proposal is not in line with the Commission's recent efforts to limit electronic discovery. See Notice of Proposed Rulemaking, 77 Fed. Reg. 60952, 60953 (Oct. 5, 2012) (explaining the need to consider limitations on electronic discovery due to its disproportionately high cost and limited value). Furthermore, HTC's proposal is inconsistent with the ALJ's new electronic discovery model order. See *Certain Reduced Folate Nutritional Products and L-Methylfolate Raw Ingredients Used Therein*, USITC Inv. No. 337-TA-857, Order No. 2 (October 16, 2012), *Certain Optoelectronic Devices for Fiber Optic Communications, Components Thereof, and Products Containing Same*, USITC Inv. No. 337-TA-860, Order No. 2 (November 1, 2012). Under these proposed changes, the Commission and the ALJ must balance a party's need for sufficiently broad discovery against the high cost of litigations at the ITC -- HTC's proposal for unlimited discovery fails to aid in that quest.

custodians in good faith.³ If good faith negotiation with FlashPoint for additional custodians fails, HTC may move the ALJ to order collection from additional custodians.

For the reasons set forth above, the ALJ hereby GRANTS-IN-PART Motion No. 850-009. The protective order limiting discovery of electronically available information attached hereto as Attachment A.

SO ORDERED.


Theodore R. Essex
Administrative Law Judge

³ While the ALJ has initially limited the number of FlashPoint custodians, he reminds the parties that discovery in ITC investigations remains broad. Should HTC discover additional information through the course of discovery that warrants seeking additional custodians, the ALJ expects FlashPoint to cooperate with HTC in good faith (bearing the Commission's broad discovery parameters in mind) in adjusting the appropriate number of custodians (within reason).

ATTACHMENT A

~~PROTECTIVE ORDER~~ **PROTECTIVE ORDER**

Metadata associated with Electronically Stored Information (“ESI”) will not be produced in this Investigation unless a party identifies a good faith basis for the production of metadata pursuant to properly propounded discovery requests that are targeted to specific issues and/or document custodians. The Parties’ respective rights to object to any discovery request are preserved. Inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding. The mere production of ESI as part of a mass production shall not itself constitute a waiver for any purpose. If produced, metadata such as the author and date and time that the document was created, last saved, or modified, to the extent such metadata exists and is readily available, shall be provided. The Parties’ right to request that additional metadata fields be set forth or provided for certain specified electronic documents following review of the producing party’s ESI is preserved. “Producing party” shall be interpreted in this Investigation to mean (a) FlashPoint, (b) HTC Corporation and HTC America, Inc. (together, “HTC”), (c) Pantech Co., Ltd. and Pantech Wireless, Inc. (together, “Pantech”), (d) Huawei Device Co., Ltd. and Huawei Device USA, Inc. (together, “Huawei”), and (e) ZTE Corporation and ZTE (USA) Inc. (together, “ZTE”). The Parties’ respective rights to object to any such request are reserved. The Parties will continue to meet and confer in good faith during discovery regarding the scope of ESI so as to minimize the burden and cost of ESI discovery.

(A) To obtain electronic mail, Parties must propound specific requests for production of e-mails. The Parties’ respective rights to object to such requests are preserved. To the extent any e-mails are produced, at least the To/From/cc/Subject/Sent Date fields shall be provided, if available.

(B) Respondents collectively shall limit their initial e-mail production requests to a total of fifteen (15) custodians for FlashPoint. FlashPoint shall limit its initial e-mail production requests to a total of five (5) custodians per HTC, Pantech, Huawei, and ZTE, respectively are preserved. After service of the initial e-mail production requests and further discovery, the Parties may jointly agree to modify this limit to the extent a requesting party can demonstrate a good faith basis for such a request based on discovery taken. If the Parties are not able to agree on the need to modify this limit, the Administrative Law Judge may, upon the motion of any party, modify this limit for good cause.

(C) Respondents collectively shall limit their e-mail production requests to a total of twenty-five (25) search terms per custodian for FlashPoint. FlashPoint shall limit its e-mail production requests to a total of fifteen (15) search terms per custodian per HTC, Pantech, Huawei, and ZTE, respectively. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g. "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. The parties may jointly agree to modify this limit to the extent a requesting party can demonstrate a good faith basis for such a request based on discovery taken. If the Parties are not able to

agree on the need to modify this limit, the Administrative Law Judge may, upon the motion of any party, modify this limit for good cause.

(D) The producing party will conduct a search of each identified custodian's e-mails using the corresponding search terms and provide to the receiving party a datasheet showing the number of documents captured by the search ("hits"). If a search would result in overproduction (that is, if a substantial number of hits captured by the search are not responsive to the request for production of e-mails), the receiving party may then identify a narrower set of search terms that the producing party will use to search and generate a datasheet anew. FlashPoint and Respondents have two iterations to complete the foregoing process. The producing party will then produce to the receiving party the documents captured by the selected search in a manner consistent with the Commission Rules, Ground Rules, and this Order. The Parties' respective rights to assert the attorney-client privilege, work product and/or other discovery immunity with respect to any such production are preserved.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER No. 12** has been served upon the following parties as indicated on **November 19, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FlashPoint Technology, Inc.:

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CERTIFICATE OF SERVICE

I, Yu-Ing Huang, hereby certify that on this 12th day of December, 2012 copies of foregoing document were served upon the following parties as indicated:

The Internet Engineering Task Force c/o The Internet Society 1775 Wiehle Ave, Suite 201 Reston, VA 20190	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Overnight Courier (FedEx No. 7942 9018 6932) <input type="checkbox"/> Via Electronic Mail
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Counsel for Complainant FlashPoint Technology, Inc.

Goutam Patnaik Pepper Hamilton LLP Hamilton Square 600 14th Street NW Washington DC 20005	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail BN_ITCFlashpoint850@pepperlaw.com
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Counsel for Respondents Huawei Technologies, Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technology (USA)

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/s/ Yu-Ing Huang
 Yu-Ing Huang