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October 31, 2011

Via Electronic Filing

The Honorable Theodore R. Essex
Administrative Law Judge
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: In the Matter of Certain Handheld Electronic Computing Devices, Related Software and Components Thereof Investigation No. 337-TA-769

Dear Judge Essex:

This letter is simply to inform Your Honor that the Barnes & Noble Respondents have met and have had correspondence with the United States Department of Justice (DOJ) concerning Microsoft's improper use of the Patents-in-Suit in an effort to dominate the Android open-source operating system employed by Barnes & Noble as well as other companies. The conduct of Microsoft addressed with the DOJ also forms the basis for Barnes & Noble's patent misuse defense raised in this investigation. Since Section 337(b)(2) authorizes the Commission during the course of an investigation and as appropriate to consult with and seek advice and information from the DOJ, Barnes & Noble brings this matter to Your Honor's attention. The attached non-confidential documents represent Barnes & Noble's correspondence and submissions to the DOJ and have already been produced to Microsoft. (BN-ITC0358652-BN-ITC0358676; BN-ITC0358677-BN-ITC0358686; BN-ITC0358687-BN-ITC0358690; BN-ITC0358691-BN-ITC0358721; BN-ITC0358730-BN-ITC0358732; BN-ITC0358796-BN-ITC0358824)

The Honorable Theodore R. Essex
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Very truly yours,

A handwritten signature in black ink, appearing to read 'R. DeLucia', with a long horizontal flourish extending to the right.

Richard L. DeLucia

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **LETTER TO JUDGE ESSEX** were served upon the following parties as indicated on this 7th day of November, 2011.

James R. Holbein, Secretary
U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

- Via Hand Delivery
- Via Overnight Federal Express Delivery
- Via First Class Mail
- Via Facsimile
- Via Electronic Service

Honorable Theodore R. Essex
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/s/ Hanna Cha
Hanna Cha
Legal Assistant