

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

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

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-769

**RESPONDENTS BARNES & NOBLE, INC.'S AND BARNESANDNOBLE.COM
LLC'S (1) MOTION FOR RECOMMENDATION TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA TO ISSUE A
LETTER ROGATORY FOR EVIDENCE FROM MOSAID TECHNOLOGIES
INC. AND (2) REQUEST TO SHORTEN COMPLAINANT MICROSOFT
CORPORATION'S AND THE STAFF'S TIME TO RESPOND**

Respondents Barnes & Noble, Inc. and barnesandnoble.com llc
(collectively "Barnes & Noble"), pursuant to 19 C.F.R. § 210.32 and § 210.26, hereby
move for the Administrative Law Judge's Recommendation that the United States
District Court for the District of Columbia issue a letter rogatory on behalf of Barnes &
Noble to obtain discovery from the following foreign third party:

MOSAID Technologies Incorporated
11 Hines Road, Suite 203
Ottawa, Ontario
Canada K2K 2X1

Barnes & Noble also requests that the Commission shorten the time in
which complainant Microsoft Corporation ("Microsoft") and the Office of Unfair Import
Investigations (the "Staff") may respond to this motion to two days, i.e., November 18,
2011, pursuant to Commission Order No. 2, § 3.7. A proposed order granting this relief
is submitted herewith.

Barnes & Noble seeks documents and deposition testimony from MOSAID Technologies Incorporated (“MOSAID”), a patent licensing company, to be used at trial to defend against the allegations made in Microsoft’s complaint in this proceeding. Specifically, as part of Barnes & Noble’s affirmative defense of patent misuse, Barnes & Noble seeks the evidence requested in order to prove that Microsoft is improperly expanding the scope of its patents in an attempt to dominate mobile operating systems such as the Android™ Operating System (“Android”) that threaten Microsoft’s monopoly in personal computer operating systems. On information and belief, to further that strategy, Microsoft and Nokia Corporation (“Nokia”) and MOSAID recently entered into a series of agreements transferring approximately 2,000 Nokia patents to MOSAID in exchange for MOSAID’s efforts to license those patents (or sue those that do not take a license) and promise to pay approximately two-thirds of any royalties back to Microsoft and Nokia. Microsoft had previously entered into partnership agreements with Nokia, whereby one of the stated motivations for this partnership was to combine the parties’ respective patent portfolios and to coordinate their offensive use of patents to drive out open source operating systems, including Android specifically. Such conduct constitutes patent misuse, which renders the patents at issue unenforceable.

On October 20, 2011, the Commission granted Barnes & Noble’s application for issuance of a subpoena *duces tecum* and subpoena *ad testificandum* requiring MOSAID’s United States subsidiary (MOSAID Corp. Ltd.) to produce documents and submit to a corporate deposition about the topics described in the Letter Rogatory, among others. In an e-mail with Barnes & Noble’s counsel on November 7, 2011, MOSAID Corp. Ltd.’s counsel stated that, “the transactions for which Barnes & Noble seeks related documents and information from MOSAID involved MOSAID’s

parent company, MOSAID Technologies Incorporated, not the US subsidiary,” and that MOSAID would not voluntarily produce the requested documents but rather must be served with a separate international subpoena. On November 8, MOSAID moved to quash and/or limit Barnes & Noble’s subpoenas, arguing, in part, that the subject transactions involved only the parent company and not the U.S. subsidiary and that Barnes & Noble was improperly attempting to obtain “documents and information in the possession of MOSAID’s foreign parent company” from MOSAID’s U.S. subsidiary.

Accordingly, Barnes & Noble respectfully requests that the Administrative Law Judge grant Barnes & Noble’s application and recommend that the United States District Court for the District of Columbia issue Barnes & Noble’s Letter Rogatory to the appropriate judicial authority in Canada for international judicial assistance pursuant to Section 43 of the Canada Evidence Act or Section 60 of the Evidence Act of Ontario.

The motion for the issuance of the Recommendation is supported by the accompanying (1) Memorandum of Law and (2) Affidavit of Stuart W. Gold, sworn to on November 15, 2011, with exhibits thereto, including the proposed Recommendation (Exhibit 1). A proposed order granting the motion is also submitted herewith.

Barnes & Noble has disclosed to Complainants, other Respondents and the Staff, its intention to file the present motion at least two business days prior to filing the motion.

Respectfully Submitted,

Dated: November 16, 2011

/s/ Stuart W. Gold
Stephen S. Madsen
Peter T. Barbur
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825 Eighth Avenue
New York, NY 10019
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Inc. and barnesandnoble.com llc*

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

**Before the Honorable Theodore R. Essex
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In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-769

**RESPONDENTS BARNES & NOBLE, INC.'S AND BARNESANDNOBLE.COM
LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION (1) FOR
RECOMMENDATION TO THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA TO ISSUE A LETTER ROGATORY FOR
EVIDENCE FROM MOSAID TECHNOLOGIES INC. AND (2) TO SHORTEN
COMPLAINANT MICROSOFT CORPORATION'S AND THE STAFF'S TIME
TO RESPOND**

Respondents Barnes & Noble, Inc. and barnesandnoble.com llc
(collectively "Barnes & Noble"), pursuant to 19 C.F.R. § 210.32 and § 210.26, hereby
apply for the issuance of the Recommendation, attached to the Affidavit of Stuart W.
Gold ("Gold Affidavit") as Exhibit 1, that the United States District Court for the District
of Columbia issue a letter rogatory on behalf of Barnes & Noble to procure evidence
from the following foreign third party:

MOSAID Technologies Incorporated
11 Hines Road, Suite 203
Ottawa, Ontario
Canada K2K 2X1

The underlying Letter Rogatory (see Gold Affidavit, Attachment A to
Exhibit 1) solicits assistance from the appropriate judicial authority in Canada to obtain
from MOSAID Technologies Incorporated ("MOSAID"), a patent licensing company,

certain documents and testimony¹ relevant to Barnes & Noble's affirmative defense of patent misuse in this case, which are unobtainable through other means. Barnes & Noble respectfully requests that the Administrative Law Judge grant this application so that Barnes & Noble may initiate a civil proceeding on the United States District Court for the District of Columbia's miscellaneous docket and obtain issuance of the attached Letter Rogatory.

Barnes & Noble also moves the Commission to shorten the time in which complainant Microsoft Corporation ("Microsoft") and the Office of Unfair Import Investigations (the "Staff") may respond to this motion to two days, pursuant to Commission Order No. 2, § 3.7.

Pursuant to Commission Order No. 2, § 3.2, Barnes & Noble hereby certifies that, prior to filing this motion, it contacted Microsoft, the other Respondents and the Staff on November 10, 2011, regarding its intention to seek a recommendation that the District Court issue this request.

BACKGROUND

In response to Microsoft's allegation in this Investigation that Barnes & Noble's Nook™ and Nook Color™ e-book reader products infringe certain Microsoft patents, Barnes & Noble has raised the affirmative defense of patent misuse. As part of that affirmative defense, Barnes & Noble has alleged that Microsoft is using its licensing practices to improperly broaden the scope of its patents in an attempt to dominate mobile operating systems such as Android that threaten Microsoft's monopoly in personal computer ("PC") operating systems.

¹ Barnes & Noble seeks testimony from John Lindgren, the Chief Executive Officer of MOSAID.

In the latest of a series of tactics designed to further that strategy, Microsoft recently entered into an agreement with Nokia Corporation (“Nokia”) and MOSAID to share in royalties derived from licensing (or suing those that do not take a license) approximately 2,000 Nokia patents acquired by MOSAID. On September 1, 2011, MOSAID acquired Core Wireless Licensing S.a.r.l. (“Core Wireless”), a company which holds a portfolio of 400 patent families, consisting of 2,000 wireless patents and patent applications originally filed by Nokia. Nokia had previously assigned its patents to a trust, which then assigned the patents to Core Wireless. Microsoft secured a license in the Nokia patents acquired by MOSAID. The arrangement effectively gives Microsoft greater power to assert patents against rival technologies.

The parties have not been shy about the power afforded to them under the deal. In the words of John Lindgren, CEO of MOSAID, “the force of [its newly acquired patent portfolio] is overwhelming,” and MOSAID is targeting “over a trillion dollars of unlicensed revenues” from mobile devices over the next 10 years of sales.² MOSAID’s Vice President has stated that, “all cell phones and smartphones operating in compliance with certain 2G, 3G and 4G wireless telecommunications standards” practice the patents.³ Moreover, because MOSAID is a nonpracticing entity, the usual threat of counter litigation will have no deterrent effect on its aggressive licensing plans—an added benefit for Microsoft.

² Interview, “John Lindgren, CEO of MOSAID talks magnitude of Nokia/Microsoft deal”, Sept. 9, 2011, <http://www.youtube.com/watch?v=37yzFT9xpys> (last visited Nov. 11, 2011).

³ Statement of MOSAID Vice President, Dr. Nima Ahmadvand, “MOSAID acquires 2,000 Nokia Wireless Patents”, Sept. 13, 2011, http://www.youtube.com/watch?v=Bdq3_jtOy_E (last visited Nov. 11, 2011).

Barnes & Noble believes that the MOSAID deal is a key element of Microsoft's horizontal partnership with Nokia, which was announced earlier this year, and included an agreement by Nokia to replace its current operating system with the Windows Phone operating system. One of the publicly stated motivations for the Microsoft-Nokia partnership was to combine the parties' respective patent portfolios and to coordinate their offensive use of patents directed at open source operating systems, including Android specifically.⁴ Microsoft's new deal with MOSAID—which began negotiations around the time the Microsoft-Nokia partnership was announced—appears to be the mechanism by which Microsoft and Nokia will use Nokia's patents to attack Android devices that threaten Microsoft's monopoly.⁵

The MOSAID deal bears directly on Barnes & Noble's patent misuse

⁴ On February 13, 2011, two days after Nokia and Microsoft announced their strategic agreement, Stephen Elop, Nokia's CEO, engaged in a videotaped question and answer session after delivering his keynote address at the Mobile World Congress. In response to a question about Nokia's pending litigation against Apple's iOS, Mr. Elop stated that:

It is the case, and was absolutely a topic of discussion with Microsoft, that Microsoft plus Nokia, has a remarkably strong intellectual property portfolio. That is something we will use appropriately within the context of our ecosystem, which means both defending the ecosystem from outside attacks, as well as appropriately ensuring that the value that we've created through our patents are properly collected from other people who may choose to take advantage of that technology.

“Conversations by Nokia: Q&A videos, break down”, <http://www.conversations.nokia.com/2011/02/22/qa-videos-break-down> (last visited Nov. 15, 2011). Mr. Elop further stated that the “[n]umber one priority is to compete with Android which is why as part of the transaction that we intend to enter into with Microsoft . . . , we are contributing assets to the ecosystem from which our competitors will develop competitive advantage against Android.” Id.

⁵ Indeed, MOSAID's CEO has stated that litigation is “highly likely” against potential licensees who fight the portfolio before being “convinced to pay the sums that [MOSAID] will be asking for.” Interview, “John Lindgren, CEO of MOSAID talks magnitude of Nokia / Microsoft deal”, supra note 2.

defense. Barnes & Noble has alleged that Microsoft is engaging in an improper, industry-wide licensing campaign to eliminate threats to Microsoft's operating systems business, and Microsoft's patent agreement with MOSAID appears to be part of that strategy. To develop these facts further, Barnes & Noble seeks testimony and documents about MOSAID's business arrangement with Microsoft and Nokia, as well as the connection between Microsoft's demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System and its coordinated intellectual property strategy with MOSAID and Nokia.

Barnes & Noble has made several efforts to obtain this discovery without burdening the judicial authorities of other jurisdictions. On October 20, 2011, the Commission granted Barnes & Noble's application for issuance of a subpoena *duces tecum* and subpoena *ad testificandum* requiring MOSAID's United States subsidiary (MOSAID Corp. Ltd.) to produce documents and submit to a corporate deposition about the topics described in the Letter Rogatory, among others. In an e-mail with Barnes & Noble's counsel on November 7, 2011 (see Declaration of Stuart W. Gold, Exh. A), MOSAID Corp. Ltd.'s counsel stated that, "the transactions for which Barnes & Noble seeks related documents and information from MOSAID involved MOSAID's parent company, MOSAID Technologies Incorporated, not the US subsidiary," and that MOSAID would not voluntarily produce the requested documents but rather must be served with a separate international subpoena. On November 8, MOSAID moved to quash and/or limit Barnes & Noble's subpoenas, arguing, in part, that the subject transactions involved only the parent company and not the U.S. subsidiary and that Barnes & Noble was improperly attempting to obtain "documents and information in the possession of MOSAID's foreign parent company" from MOSAID's U.S. subsidiary.

Hence, this motion for a recommendation that the United States District Court for the District of Columbia issue a letter rogatory is required.

ARGUMENT

I. **THE UNITED STATES DISTRICT COURT HAS AUTHORITY TO ISSUE LETTERS ROGATORY.**

The Commission has previously recommended that federal district courts seek international judicial assistance on behalf of parties to Commission investigations. See, e.g., Certain Display Devices Including Digital Televisions and Monitors, Inv. No. 337-TA-713, Order No. 19 (U.S.I.T.C. Oct. 5, 2010) (motion granted by Judge Essex recommending that the District Court issue a letter rogatory); Certain Probe Card Assemblies, Components Thereof and Certain Tested DRAM and NAND Flash Memory Devices and Products Containing Same, Inv. No. 337-TA-621, Order No. 12, 2008 WL 1994426 (U.S.I.T.C. May 6, 2008) (motion granted by Judge Essex recommending that the District Court issue a letter rogatory); Certain GPS Chips, Associated Software and Systems, and Products Containing Same, Inv. No. 337-TA-596, Order No. 11 (U.S.I.T.C. June 1, 2007) (granting motion for recommendations to the District Court to issue letters rogatory); Certain Diltiazem Hydrochloride and Diltiazem Preparations, Inv. No. 337-TA-349, Order No. 18, 1993 ITC Lexis 481 (U.S.I.T.C. Aug. 17, 1993) (granting motion for a recommendation to the District Court to issue an order for the parties to take depositions in Japan).

Moreover, it is well established that the federal district courts have authority to act on the Commission's recommendations to issue letters rogatory. See 28 U.S.C. §§ 1651, 1781(b)(2); Fed R. Civ. P. 28(b) (incorporating letters rogatory as a proper method for taking depositions abroad).

II. THE LETTER ROGATORY IS NECESSARY IN THE INTEREST OF JUSTICE BECAUSE THE EVIDENCE TO BE OBTAINED FROM MOSAID DIRECTLY BEARS ON BARNES & NOBLE'S PATENT MISUSE AFFIRMATIVE DEFENSE AND IS UNOBTAINABLE WITHOUT THE ASSISTANCE OF A CANADIAN COURT.

The issuance of the Letter Rogatory is warranted for three reasons. First, the deposition testimony and documents requested are highly relevant to Barnes & Noble's patent misuse affirmative defense. As discussed above, Microsoft entered into a strategic alliance with Nokia and MOSAID, in which ownership of approximately 2,000 Nokia patents were transferred to MOSAID to enforce against manufacturers of mobile devices, receiving in exchange approximately two-thirds of the royalties from any licenses MOSAID extracts. That agreement furthers Microsoft's strategy of using patents to impair the growth and development of open source mobile operating systems, like Android, that pose a threat to Microsoft's monopoly in PC operating systems. Based on public statements by MOSAID, the parties expect to target "four of the top five global cell phone vendors" who will be "unlicensed to the Core Wireless patents", reaping over a billion dollars in revenue.⁶ Thus, Barnes & Noble anticipates that the requested evidence will be highly relevant to the issue of patent misuse.

Second, Barnes & Noble's Letter Rogatory is narrowly tailored to seek information that will provide evidence of the details and reasons for the Microsoft-Nokia-MOSAID agreement beyond the facts available from public sources, including information about MOSAID's business arrangement with Microsoft and Nokia, as well as

⁶ Press Release, MOSAID Updates Shareholders on Special Committee Process, Addresses Wi-LAN Mischaracterizations (Sept. 12, 2011), *available at* <http://www.mosaid.com/corporate/news-events/releases-2011/110912.php>; *see* Interview, "John Lindgren, CEO of MOSAID talks magnitude of Nokia / Microsoft deal", *supra* note 2.

the connection between Microsoft's demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System and its coordinated intellectual property strategy with MOSAID and Nokia. Because Barnes & Noble's Letter Rogatory is narrowly tailored to obtain highly relevant information in this investigation, it is not overly broad and will not burden MOSAID more than is necessary. Moreover, as stated above, there is a substantial likelihood that the documents and testimony requested in the Letter Rogatory are within the possession, control and knowledge of MOSAID, and thus obtainable by Barnes & Noble in this manner. The CEO of MOSAID himself, in response to a question about the Nokia-Microsoft-MOSAID deal negotiations, has stated that, "there was an extensive period of negotiations that finally culminated in our achievement of being able to acquire this fundamental portfolio."⁷

Third, Barnes & Noble is unable to obtain that information by any other means. According to counsel for MOSAID's U.S. subsidiary, the MOSAID entity that entered into the relevant agreement is in Canada, beyond the subpoena power of the Commission. As indicated above (p. 5), it appears highly unlikely that Barnes & Noble's attempts to obtain relevant information from MOSAID's United States subsidiary will satisfy its evidentiary needs—indeed, the U.S. subsidiary is attempting to quash the subpoena. Moreover, with a December discovery end-date and a hearing scheduled for February 6, 2012, there is not time to first complete discovery of MOSAID's United States subsidiary (and complete the review of documents produced by Microsoft) before

⁷ Interview, "John Lindgren, CEO of MOSAID talks magnitude of Nokia/Microsoft deal", September 9, 2011, <http://www.youtube.com/watch?v=37yzFT9xpys> (last visited Nov. 11, 2011).

making this application.⁸

III. A SHORTENED TIME TO RESPOND TO THIS MOTION IS NECESSARY GIVEN THE TIMEFRAME FOR DISCOVERY AND THE FEBRUARY 6, 2012 HEARING DATE.

Pursuant to Commission Order No. 2, § 3.7, Barnes & Noble respectfully requests that the Commission shorten the time in which complainant Microsoft and the Staff may respond to this motion to two days. A shortened response time is necessary given the relatively short timeframe for discovery and the upcoming hearing in this investigation, as well as the significant amount of time involved in obtaining international judicial assistance.

CONCLUSION

For the reasons set forth above, Barnes & Noble respectfully requests that the Commission grant Barnes & Noble's Application for an order recommending that the United States District Court for the District of Columbia issue a letter rogatory, and that the proposed Recommendation with the attached Letter Rogatory be issued (see Gold Affidavit, Exh. 1). Barnes & Noble also requests that the Commission shorten the time for response to this motion to two days.

⁸ The testimony and internal MOSAID documents requested in the Letter Rogatory also extend beyond those likely to be in the knowledge or possession of Microsoft.

Respectfully Submitted,

Dated: November 16, 2011

/s/ Stuart W. Gold
Stephen S. Madsen
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New York, NY 10019
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*Counsel for Respondents Barnes & Noble,
Inc. and barnesandnoble.com llc*

APPENDIX

reader products infringe certain Microsoft patents, Barnes & Noble has raised the affirmative defense of patent misuse.

3. Microsoft recently entered into a series of agreements with Nokia Corporation (“Nokia”) and MOSAID, a patent licensing company whose strategy includes expanding its patent portfolio through licensing partnerships and patent acquisitions.

4. On information and belief, through these agreements, Nokia transferred ownership of approximately 2,000 Nokia patents to MOSAID in exchange for MOSAID’s promise to license those patents and pay approximately two-thirds of any royalties back to Microsoft and Nokia. In the words of John Lindgren, CEO of MOSAID, “the force of [its newly acquired patent portfolio] is overwhelming,” and MOSAID is targeting “over a trillion dollars of unlicensed revenues” from mobile devices over the next ten years of sales.¹ MOSAID’s Vice President has stated that, “all cell phones and smartphones operating in compliance with certain 2G, 3G and 4G wireless telecommunications standards” practice the patents.²

5. Barnes & Noble believes that the MOSAID deal is a key element of Microsoft’s horizontal partnership with Nokia, which was announced earlier this year, and included an agreement by Nokia to replace its current operating system with the Windows Phone operating system. One of the publicly stated motivations for Microsoft-

¹ Interview, “John Lindgren, CEO of MOSAID talks magnitude of Nokia/Microsoft deal”, Sept. 9, 2011, <http://www.youtube.com/watch?v=37yzFT9xpys> (last visited Nov. 11, 2011).

² Statement of MOSAID Vice President, Dr. Nima Ahmadvand, “MOSAID acquires 2,000 Nokia Wireless Patents”, Sept. 13, 2011, http://www.youtube.com/watch?v=Bdq3_jtOy_E (last visited Nov. 11, 2011).

Nokia partnership is to combine the parties' respective patent portfolios and to coordinate their offensive use of patents directed at open source operating systems, including the Android™ Operating System ("Android") specifically.³

6. Barnes & Noble now seeks to obtain nonpublic testimony and documents about MOSAID's business arrangement with Microsoft and Nokia, as well as the connection between Microsoft's demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System and its coordinated intellectual property strategy with MOSAID and Nokia.

7. Over the past few weeks, I or other attorneys of my firm have made various efforts to obtain the discovery sought by this motion without burdening this Commission or the judicial authorities of other jurisdictions. On October 20, 2011, the Commission granted Barnes & Noble's application for issuance of a subpoena *duces tecum* and subpoena *ad testificandum* requiring MOSAID's United States subsidiary (MOSAID Corp. Ltd.) to produce documents and submit to a corporate deposition about

³ On February 13, 2011, two days after Nokia and Microsoft announced their strategic agreement, Stephen Elop, Nokia's CEO, engaged in a videotaped question and answer session after delivering his keynote address at the Mobile World Congress. In response to a question about Nokia's pending litigation against Apple's iOS, Mr. Elop stated that:

It is the case, and was absolutely a topic of discussion with Microsoft, that Microsoft plus Nokia, has a remarkably strong intellectual property portfolio. That is something we will use appropriately within the context of our ecosystem, which means both defending the ecosystem from outside attacks, as well as appropriately ensuring that the value that we've created through our patents are properly collected from other people who may choose to take advantage of that technology.

"Conversations by Nokia: Q&A videos, break down", <http://www.conversations.nokia.com/2011/02/22/qa-videos-break-down> (last visited Nov. 15, 2011). Mr. Elop further stated that the "[n]umber one priority is to compete with Android which is why as part of the transaction that we intend to enter into with Microsoft . . . , we are contributing assets to the ecosystem from which our competitors will develop competitive advantage against Android." *Id.*

the topics described in the Letter Rogatory, among others. In an e-mail from Mark Whitaker, of Baker Botts LLP, counsel for nonparty MOSAID Corp. Ltd., to me sent on November 7, 2011, at 2:01 p.m., a true and correct copy of which is attached hereto as Exhibit 2, Mr. Whitaker stated that, “the transactions for which Barnes & Noble seeks related documents and information from MOSAID involved MOSAID’s parent company, MOSAID Technologies Incorporated, not the US subsidiary,” and that MOSAID would not voluntarily produce the requested documents but rather must be served with a separate international subpoena.

8. The Letter Rogatory is necessary in the interest of justice because, as stated above, the evidence to be obtained from MOSAID directly bears on Barnes & Noble’s patent misuse affirmative defense and is unobtainable without the assistance of a Canadian court. The Letter Rogatory is narrowly tailored to seek information that will provide evidence of the details and reasons for the Microsoft-Nokia-MOSAID agreement beyond the facts available from public sources, including information about MOSAID’s business arrangement with Microsoft and Nokia, as well as the connection between Microsoft’s demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System and its coordinated intellectual property strategy with MOSAID and Nokia. Based on statements made by MOSAID’s counsel, there is a substantial likelihood that the documents and testimony requested in the Letter Rogatory are within the possession, control and knowledge of MOSAID, and thus obtainable by Barnes & Noble in this manner. According to counsel for MOSAID’s United States’ subsidiary, the MOSAID entity that entered into the relevant agreements is in Canada. Barnes & Noble’s attempts to obtain the same documents and testimony from MOSAID’s

U.S. subsidiary have been unsuccessful, and MOSAID has been unwilling to produce relevant documents or furnish a corporate witness in or outside Canada voluntarily.

9. Therefore, I respectfully request that this Commission enter an order recommending that the United States District for the District of Columbia issue a Letter Rogatory in the form attached (see Exh. 1).

10. I also respectfully request that this Commission shorten the time for response to this motion to three days, which is necessary given the relatively short timeframe for discovery in this investigation and the significant amount of time involved in obtaining international judicial assistance.



Stuart W. Gold

Sworn to before me
this 15 day of November 2011.



Notary Public

ROBERT B. ZWILLICH
Notary Public, State of New York
No. 01ZW4630959
Qualified in New York County
Commission Expires **October 31, 2014**

EXHIBIT 1

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

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

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-769

**[PROPOSED] RECOMMENDATION FOR ISSUANCE OF A LETTER
ROGATORY FOR INTERNATIONAL JUDICIAL ASSISTANCE**

The undersigned Administrative Law Judge finds that the evidence that Respondents Barnes & Noble and barnesandnoble.com llc (collectively “Barnes & Noble”) seek pursuant to the Request for International Judicial Assistance (Letter Rogatory) (“Letter Rogatory”) is reasonably necessary to investigate fully Barnes & Noble’s affirmative defense of patent misuse against Complainant Microsoft Corporation. Accordingly, the undersigned recommends that the United States District Court for the District of Columbia issue, under its seal and signature, the attached Letter Rogatory to the Appropriate Judicial Authority of Canada (Attachment A).

A letter rogatory is the appropriate method of gathering necessary evidence—whether documents or testimony—in a foreign country, like Canada, that is not a party to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. 22 C.F.R. § 92.54; 28 U.S.C. § 1651. Rule 28(b) of the Federal Rules of Civil Procedure contemplates gathering evidence through a deposition in a foreign country pursuant to a properly issued and appropriate letter rogatory. See Fed. R. Civ. P. 28(b) (“A deposition may be taken in a foreign country . . .

(B) under a . . . ‘letter rogatory’ . . . (2)(A) on appropriate terms after an application and notice of it”). Moreover, 28 U.S.C. § 1781(b)(2) authorizes a federal court to transmit directly such a letter rogatory to a foreign judicial authority. See also 28 U.S.C. § 1651. Barnes & Noble’s Letter Rogatory solicits international judicial assistance in obtaining critical evidence abroad needed for this pending investigation into alleged patent infringing imports of certain handheld electronic computing devices, related software and components thereof.

In order to comply with the statutory time limitations on Commission investigations, the undersigned respectfully requests that the Court assign a judge and schedule a hearing to expedite the issuance of the Letter Rogatory.

Respectfully submitted this ____ day of _____, 2011

Theodore R. Essex
Administrative Law Judge
United States International Trade Commission
500 E. Street, S.W., Room 317
Washington, D.C. 20436

Address for Return of Issued Letter Rogatory:

Stuart W. Gold
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825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
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ATTACHMENT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Microsoft Corporation,

Plaintiff (Complainant),

v.

Barnes & Noble, Inc., barnesandnoble.com
LLC, Hon Hai Precision Industry Co., Ltd.,
Foxconn Electronics, Inc., Foxconn Precision
Component (Shen Zhen) Co. Ltd., Foxconn
International Holdings Ltd., Inventec
Corporation,

Defendants (Respondents).

Civil Action No. Misc. _____

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
(LETTER ROGATORY)**

The United States District Court for the District of Columbia presents its compliments to the Appropriate Judicial Authority of Canada, and requests international judicial assistance to obtain evidence to be used at trial in a pending administrative proceeding as approved by this Court in the above-captioned matter. This Court has authority to submit this Letter Rogatory under 28 U.S.C. §§ 1651 and 1781(b)(2).

Specifically, this Court requests that the Appropriate Judicial Authority of Canada, by the proper and usual process of Canada's courts, compel the appearance of MOSAID Technologies Incorporated, 11 Hines Road, Suite 203, Ottawa, Ontario, Canada K2K 2X1 ("MOSAID"), to testify under oath through John Lindgren, the Chief Executive Officer of MOSAID, the person most knowledgeable about the topics below, and to compel the production of the documents identified below from MOSAID.

Based on the representations made by Respondents Barnes & Noble, Inc. and barnesandnoble.com llc (collectively, "Barnes & Noble"), this Court believes that

justice cannot be served between the parties in the above-captioned matter unless the evidence requested herein is made available by the Appropriate Judicial Authority of Canada for use in an investigation being conducted by the International Trade Commission into whether Barnes & Noble's Nook and Nook Color infringe patents owned by Microsoft. The Court believes that MOSAID has knowledge regarding material facts and is in possession of documents that are highly relevant to Barnes & Noble's patent misuse defense that cannot be obtained without the assistance of the Appropriate Judicial Authority. Barnes & Noble attempted to obtain this information from MOSAID's United States subsidiary or have MOSAID directly produce the documents and furnish its corporate witness for deposition on the topics requested herein. But MOSAID's United States subsidiary moved to quash the subpoena served upon it and indicated that MOSAID was unwilling to provide the information voluntarily. Thus, Barnes & Noble had no other option but to seek international judicial assistance.¹

In light of the foregoing, this Court respectfully requests that the Appropriate Judicial Authority of Canada give this matter urgent attention in order that the evidence requested herein may be obtained before the period for fact discovery concludes on December 14, 2011, and available for use at trial on February 6, 2012.

I. SUMMARY OF THIS ACTION

The nature of the proceeding for which the evidence is requested is a civil patent infringement action based upon an amended verified complaint filed by Microsoft Corporation ("Microsoft") on April 18, 2011. The complaint alleges that Barnes &

¹ The documents and testimony set forth below extend beyond those likely to be in the possession or knowledge of the opposing party in this action, Complainant Microsoft Corporation ("Microsoft").

Noble, Inc., barnesandnoble.com LLC, Foxconn Electronics, Inc., Foxconn Precision Component (Shen Zhen) Co. Ltd., Foxconn International Holdings Ltd. and Hon Hai Precision Industry Co., Ltd. and Inventec Corporation (“Respondents”) import, sell for importation and/or sell within the United States after importation certain handheld electronic computing devices, related software and components thereof that allegedly infringe U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551 and U.S. Patent No. 6,957,233, in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). As a remedy, Microsoft seeks an injunction barring importation of the allegedly infringing devices, software and components.

The Tariff Act of 1930 prohibits importing goods into the United States that infringe a United States patent, among other things. Pursuant to Microsoft’s complaint, the Commission instituted Investigation No. 337-TA-769, which was assigned to Administrative Law Judge Theodore R. Essex to preside over pretrial matters, conduct a trial and issue an initial determination on the merits of the Investigation. The initial determination of Judge Essex is subject to possible review by the Commission, with a right of appeal to the U.S. Court of Appeals for the Federal Circuit and further appeal to the Supreme Court of the United States.

Respondents have raised several defenses against Microsoft’s allegations of patent infringement, including patent misuse, non-infringement, invalidity of the patents, unenforceability of the patents, public interest and lack of domestic industry. This Letter Rogatory is intended to obtain information material to the patent misuse defense asserted by Barnes & Noble. As part of that defense, Barnes & Noble has alleged that Microsoft is using its licensing practices to broaden improperly the scope of

its patent grant in an attempt to dominate open source mobile operating systems (like the one Barnes & Noble's handheld devices use) that threaten Microsoft's monopoly in personal computer ("PC") operating systems. Information about Microsoft's arrangement with MOSAID—which Barnes & Noble claims was entered into to facilitate Microsoft's strategy of leveraging its patents with anticompetitive effect—is necessary in the interest of justice for Barnes & Noble to defend fairly against the allegations made by Microsoft on the basis of patent misuse.

Specifically, Microsoft and Nokia Corporation ("Nokia") recently entered into an agreement with MOSAID to share in royalties derived from licensing (or suing those that do not take a license) approximately 2,000 Nokia patents acquired by MOSAID. On September 1, 2011, MOSAID acquired Core Wireless Licensing S.a.r.l. ("Core Wireless"), a company which holds a portfolio of 400 patent families, consisting of 2,000 wireless patents and patent applications originally filed by Nokia. Nokia had previously assigned its patents to a trust, which then assigned the patents to Core Wireless. Microsoft secured a license in the Nokia patents acquired by MOSAID.

Barnes & Noble believes that the MOSAID deal is a key element of Microsoft's horizontal partnership with Nokia, which was announced earlier this year, and included an agreement by Nokia to replace its current operating system with the Windows Phone operating system. One of the publicly stated motivations for the Microsoft-Nokia partnership was to combine the parties' respective patent portfolios and to coordinate their offensive use of patents directed at open source operating systems, specifically including the Android™ Operating System ("Android"). Microsoft's new deal with MOSAID—which began negotiations around the time the Microsoft-Nokia partnership was announced—appears to be the mechanism by which Microsoft and Nokia

will use Nokia's patents to attack Android-based devices that threaten Microsoft's monopoly. Thus, the MOSAID deal bears directly on Barnes & Noble's patent misuse defense.

To develop these facts further, Barnes & Noble seeks testimony and documents about MOSAID's business arrangement with Microsoft and Nokia, as well as the connection between Microsoft's demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System, and its coordinated intellectual property strategy with MOSAID and Nokia. Any materially relevant evidence uncovered as a result of this Letter Rogatory will be adduced at trial, if admissible.

II. DOCUMENTS AND TESTIMONY REQUESTED

This Court requests the Appropriate Judicial Authority of Canada to compel MOSAID to produce to Barnes & Noble documents responsive to the requests for production in Addendum A to this Letter Rogatory, to the extent that they are in the possession, control or power of MOSAID and are not privileged under the applicable laws of Canada or the United States. This Court also requests the Appropriate Judicial Authority of Canada to compel MOSAID to make Mr. Lindgren, the person most knowledgeable about the topics listed in Addendum B to this Letter Rogatory, to appear and give a deposition on oral examination concerning those topics.

In addition to the privileges applicable to MOSAID under the Canadian laws, under the laws of the United States Mr. Lindgren may refuse to answer any question if such answer would subject him to a real and appreciable danger of criminal liability in the United States. Likewise, Mr. Lindgren may refuse to answer a question or produce a document if such answer or document would disclose a confidential

communication between him and MOSAID's attorney(s) in connection with seeking legal advice.

The Court also understands the confidential nature of the documents requested from MOSAID, and there is a protective order in this case to protect the confidentiality of any documents MOSAID produces. The protective order is Addendum C to this Letter Rogatory.

III. SPECIAL METHODS AND PROCEDURES REQUESTED TO BE FOLLOWED

To the extent permitted by the applicable laws of Canada, this Court respectfully requests that the Appropriate Judicial Authority of Canada require that the following methods and procedures be followed in connection with the deposition and document production requested herein:

- a. The examination be conducted orally;
- b. The parties' legal representatives or their designees and a stenographer be permitted to be present during the examination;
- c. There be excluded from the examination all persons other than the parties' legal representatives or their designees, a stenographer, and any judicial officer of Canada;
- d. The stenographer be permitted to record verbatim the examination;
- e. The attorneys from the law firm of Cravath, Swaine & Moore LLP, acting as legal representatives of Barnes & Noble, or their designees, be permitted to conduct the examination;
- f. The attorneys conducting the examination be permitted to ask questions regarding the topics listed in Addendum B; or, if a judicial officer is conducting the examination, the parties' legal representatives or their designees be permitted to submit questions to that officer for presentment to the witness;
- g. Seven (7) hours be allotted for the examination of the witness; and
- h. The witness be examined as soon as practicable, but before December 14, 2011, the date for the close of discovery; and the documentary evidence be

produced or provided for inspection and copying at least ten (10) days before the examination.

IV. RECIPROCITY AND REIMBURSEMENT FOR COSTS

This Court stands ready to extend similar assistance to the judicial tribunals of Canada. To the extent that there are expenses associated with providing assistance in response to this Letter Rogatory, this Court will see that the Appropriate Judicial Authority of Canada is reimbursed by Barnes & Noble.

Dated: _____, 2011
Month, Day

The Honorable _____
United States District Court Judge
U.S. District Court for the District of Columbia

ADDENDUM A

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents, including any document or thing exchanged between MOSAID and Microsoft or Nokia, relating to any possible infringement claims involving Barnes & Noble's Nook™ and Nook Color™ products.

REQUEST FOR PRODUCTION NO. 2

All documents relating to the agreement entered into by MOSAID and Core Wireless on or about September 1, 2011, including MOSAID's strategy or rationale regarding its decision to acquire Core Wireless, the patent portfolio of Core Wireless and the licensing of the patent portfolio of Core Wireless.

REQUEST FOR PRODUCTION NO. 3

All documents relating to MOSAID's revenue sharing arrangement with Microsoft and Nokia, announced on or about September 1, 2011.

REQUEST FOR PRODUCTION NO. 4

All documents, including any document exchanged between MOSAID and Microsoft or Nokia, relating to U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551, U.S. Patent No. 6,957,223, U.S. Patent No. 5,579,517, U.S. Patent No. 5,652,913, U.S. Patent No. 5,758,352, U.S. Patent No. 6,791,536 and U.S. Patent No. 6,897,853, or to any patent that Microsoft or MOSAID believes controls or dominates the Android™ Operating System.

REQUEST FOR PRODUCTION NO. 5

All documents since January 1, 2010 relating to any evaluation, assessment or analysis of MOSAID's offensive or defensive use of patent rights concerning mobile

devices or tablet computers, including mobile devices or tablet computers running open source operating systems.

REQUEST FOR PRODUCTION NO. 6

All documents relating to any discussions or analyses of any potential role played or to be played by Microsoft or Nokia in licensing or asserting MOSAID's patents.

REQUEST FOR PRODUCTION NO. 7

All documents since January 1, 2010 relating to communications between or among MOSAID and Microsoft or Nokia, relating to the Android™ Operating System.

REQUEST FOR PRODUCTION NO. 8

All documents since January 1, 2010, including any document exchanged between MOSAID and Microsoft or Nokia, relating to Nokia's or Microsoft's plans, strategies or efforts to increase their collective share or individual shares of the mobile device or mobile operating system markets.

ADDENDUM B

DEPOSITION TOPICS

1. The subject matter of the documents produced in response to the requests in Addendum A to this Letter Rogatory.

2. Any relationship between MOSAID and Barnes & Noble's Nook™ and Nook Color™ products, including any alleged infringement by Barnes & Noble of any other Microsoft or MOSAID patent.

3. The agreement entered into by MOSAID and Core Wireless on or about September 1, 2011, including MOSAID's strategy or rationale regarding its decision to acquire Core Wireless, the patent portfolio of Core Wireless and the licensing of the patent portfolio of Core Wireless.

4. MOSAID's revenue sharing arrangement with Microsoft and Nokia, announced on or about September 1, 2011.

5. U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551, U.S. Patent No. 6,957,223, U.S. Patent No. 5,579,517, U.S. Patent No. 5,652,913, U.S. Patent No. 5,758,352, U.S. Patent No. 6,791,536 and U.S. Patent No. 6,897,853, or any patent that MOSAID, Microsoft or Nokia believes controls or dominates the Android™ Operating System.

6. Any evaluation, assessment or analysis since January 1, 2010 of MOSAID's offensive or defensive use of patent rights concerning mobile devices, tablet computers or PCs, including mobile devices or tablet computers running open source operating systems.

7. Any discussions or analyses of any potential role played or to be played by Microsoft or Nokia in licensing or asserting MOSAID's patents.

8. Any relationship between MOSAID and Microsoft and Nokia relating to the Android™ Operating System since January 1, 2010.

9. Nokia's or Microsoft's plans, strategies or efforts to increase their collective share or individual shares of the mobile device or mobile operating system markets since January 1, 2010.

ADDENDUM C

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

ORDER NO. 1: PROTECTIVE ORDER

(April 25, 2011)

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

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.



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 Handheld Electronic Computing Devices, Related Software, and Components Thereof*, Investigation No. 337-TA-769, 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 _____

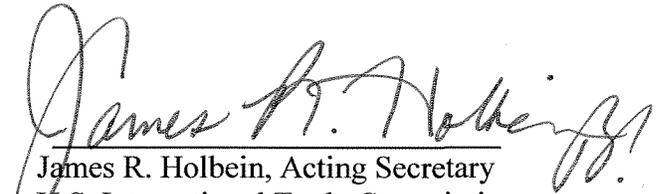
Firm or affiliation _____

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER 1** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on April 25, 2011.


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

On Behalf of Complainant Microsoft Corporation:

Jonathan J. Engler, Esq.
ADDUCI MASTRIANI & SCHAUMBERG LLP
1200 17th Street, NW, 5th Floor
Washington, DC 20036

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

On Behalf of Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC:

Marcia H. Sundeen, Esq.
KENYON & KENYON, LLP
1500 K Street, NW
Washington, DC 20005

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

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

CERTIFICATE OF SERVICE – PAGE TWO

Respondents:

Hon Hai Precision Industry Co., Ltd.
2 Zihyou Street, Tucheng City
Taipei County; 236
Taiwan

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

Foxconn Electronics, Inc.
2 Zihyou Street, Tucheng City
Taipei County; 236
Taiwan

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

Foxconn Precision Component (Shenzhen) Co.Ltd
No. 2, East Ring Road
No. 10 Industrial Zone
Yousong, Longhua, Shenzhen
Guandong 518109
China

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

Foxconn International Holdings, Ltd
8F Peninsula Tower
538 Castle Peak Road
Cheung Sha Wan Kowloon
New Territories
Hong Kong

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

Inventee Corporation
Inventee Building
No. 66 Hou-Kang Street
Shin-Lin District
Taipei County, 111
Taiwan

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

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE -PAGE THREE

PUBLIC MAILING LIST:

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

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Kenneth Clair
THOMSON WEST
1100 Thirteenth Street, NW, Suite 200
Washington, D.C. 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

EXHIBIT 2



RE: Microsoft v. Barnes and Noble/MOSAID

<mark.whitaker@bakerbotts.com> to: SGold

Cc: BDeMay, tommy.martin

11/07/2011 12:01 PM

History: This message has been forwarded.

Stuart,

We continue to search for responsive documents within MOSAID's US subsidiary, but have to date found nothing. It is our understanding that the transactions for which Barnes & Noble seeks related documents and information from MOSAID involved MOSAID's parent company, MOSAID Technologies Incorporated, not the US subsidiary. But I do not now know what if any documents it holds that may be responsive to your requests. Thus, in response to your email, and the breadth and content of the subpoena requests and topics, it is our position that you if you wish to continue to pursue the requested information from the parent company, you will need to use Hague Convention or letters rogatory procedures.

Thanks,
Mark

Mark L. Whitaker
Partner
Direct: 202 639-7785
Fax: 202 639-1151

BAKER BOTTS LLP ■
The Warner
1299 Pennsylvania Ave., N.W.
Washington, DC 20004
mark.whitaker@bakerbotts.com

From: Stuart Gold [<mailto:SGold@cravath.com>]
Sent: Friday, November 04, 2011 6:35 PM
To: Whitaker, Mark
Cc: Brendon DeMay
Subject: Re: Microsoft v. Barnes and Noble/MOSAID

Mark--Just checking in on the Letters Rogatory front. It would be helpful if you would let me know whether we will need to seek process in Canada for documents and testimony by Monday. If not, I will have to assume I need to seek such process. Thanks.

Stuart W. Gold
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, NY 10019
(Tel) 212-474-1394
(Fax) 212-474-3700

From: Stuart Gold/NYC/Cravath
To: mark.whitaker@bakerbotts.com
Cc: Brendon DeMay/NYC/Cravath@Cravath
Date: 11/02/2011 12:46 PM
Subject: Microsoft v. Barnes and Noble/MOSAID

I have consulted with my client and considered our prior discussions.

With respect to narrowing the requests, you can limit production under Request No. 4 to start with documents created on or after 1/1/2010. Also, you can limit Request No. 6 (all documents relating to any evaluation, assessment or analysis of MOSAID's offensive or defensive use of intellectual property rights including its licensing practices or litigation strategy concerning mobile devices or tablet computers including those running open source operating systems) to documents evaluating, assessing or analyzing MOSAID's licensing practices or litigation strategy concerning mobile devices or tablets since 1/1/10.

Other narrowing measures can be discussed once you have some idea of the size of the documents you have to review.

Unfortunately as we continue to review the Microsoft production it is unclear whether it has produced all the relevant traffic between MOSAID and Microsoft/Nokia on the subject of the recent agreements and therefore we cannot agree to limit your production to documents internal to MOSAID or between MOSAID and Nokia. With a December 14 discovery cutoff there is not sufficient time for us to await a full analysis and motion practice as to the Microsoft production before seeking production by MOSAID.

I also request you inform me whether any of the documents that may be responsive are located in Canada, and, if so, whether those will be voluntarily included in the production, as opposed to my seeking a Letter Rogatory to the appropriate Canadian authority.

We will extend MOSAID's time to move to quash until November 8. The production date will be adjourned until November 11, with a privilege document list to follow. The deposition hopefully can be scheduled for the week of December 5.

Stuart W. Gold
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, NY 10019
(Tel) 212-474-1394
(Fax) 212-474-3700

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UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before The Honorable Theodore R. Essex
Administrative Law Judge

In the Matter of

CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF

Investigation No. 337-TA-769

**[PROPOSED] ORDER GRANTING RESPONDENTS' REQUEST FOR
SHORTENED TIME PERIOD TO RESPOND**

Before the Court is Respondents Barnes & Noble, Inc.'s and
barnesandnoble.com llc's Motion for Recommendation to the United States District
Court for the District of Columbia to Issue a Letter Rogatory for Evidence from
MOSAID Technologies Inc. ("MOSAID") and a Request to Shorten Complainant
Microsoft Corporation and the Office of Unfair Import Investigations' Time to Respond.
Having considered the record, the papers filed by the parties, the documents cited therein
and the applicable law, it is hereby ORDERED that

Respondents' Request is GRANTED. Responses to Respondents' Motion
for Recommendation to the United States District Court for the District of Columbia to
Issue a Letter Rogatory for Evidence from MOSAID shall be due on November 18, 2011.

IT IS SO ORDERED on this _____ day of _____ 2011.

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

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

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

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-769

**[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION FOR
RECOMMENDATION TO THE DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA TO ISSUE A LETTER ROGATORY**

On November 15, 2011, Respondents Barnes & Noble, Inc. and barnesandnoble.com llc (collectively, "Barnes & Noble") filed a motion seeking issuance of the attached Recommendation that the United States District Court for the District of Columbia issue a letter rogatory on behalf of Barnes & Noble to obtain documents and deposition testimony from MOSAID Technologies Inc. ("MOSAID") located in Finland.

Barnes & Noble seeks discovery from MOSAID to be used at trial to defend against the allegations made in Microsoft Corporation's ("Microsoft") complaint. Specifically, as part of Barnes & Noble's affirmative defense of patent misuse, Barnes & Noble seeks the evidence requested in order to prove that Microsoft is improperly expanding the scope of its patents in an attempt to dominate mobile operating systems such as the Android™ Operating System that threaten Microsoft's monopoly in personal computer operating systems. Barnes & Noble argues that, as part of this strategy, Microsoft and Nokia Corporation ("Nokia") recently entered into a series of agreements with MOSAID, a patent licensing company, transferring approximately 2,000 Nokia

patents to MOSAID in exchange for MOSAID's efforts to license those patents (or sue those that do not take a license) and promise to pay approximately two-thirds of any royalties back to Microsoft and Nokia. Barnes & Noble claims that Microsoft and Nokia's motivation for this partnership was to combine the parties' respective patent portfolios and to coordinate their offensive use of patents to drive out open source operating systems, including Android specifically. Barnes & Noble argues that such conduct constitutes patent misuse.

The motion is hereby GRANTED.

IT IS SO ORDERED on this _____ day of _____ 2011.

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

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

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

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-769

**[PROPOSED] RECOMMENDATION FOR ISSUANCE OF A LETTER
ROGATORY FOR INTERNATIONAL JUDICIAL ASSISTANCE**

The undersigned Administrative Law Judge finds that the evidence that Respondents Barnes & Noble and barnesandnoble.com llc (collectively “Barnes & Noble”) seek pursuant to the Request for International Judicial Assistance (Letter Rogatory) (“Letter Rogatory”) is reasonably necessary to investigate fully Barnes & Noble’s affirmative defense of patent misuse against Complainant Microsoft Corporation. Accordingly, the undersigned recommends that the United States District Court for the District of Columbia issue, under its seal and signature, the attached Letter Rogatory to the Appropriate Judicial Authority of Canada (Attachment A).

A letter rogatory is the appropriate method of gathering necessary evidence—whether documents or testimony—in a foreign country, like Canada, that is not a party to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. 22 C.F.R. § 92.54; 28 U.S.C. § 1651. Rule 28(b) of the Federal Rules of Civil Procedure contemplates gathering evidence through a deposition in a foreign country pursuant to a properly issued and appropriate letter rogatory. See Fed. R. Civ. P. 28(b) (“A deposition may be taken in a foreign country . . .

(B) under a . . . ‘letter rogatory’ . . . (2)(A) on appropriate terms after an application and notice of it”). Moreover, 28 U.S.C. § 1781(b)(2) authorizes a federal court to transmit directly such a letter rogatory to a foreign judicial authority. See also 28 U.S.C. § 1651. Barnes & Noble’s Letter Rogatory solicits international judicial assistance in obtaining critical evidence abroad needed for this pending investigation into alleged patent infringing imports of certain handheld electronic computing devices, related software and components thereof.

In order to comply with the statutory time limitations on Commission investigations, the undersigned respectfully requests that the Court assign a judge and schedule a hearing to expedite the issuance of the Letter Rogatory.

Respectfully submitted this ____ day of _____, 2011

Theodore R. Essex
Administrative Law Judge
United States International Trade Commission
500 E. Street, S.W., Room 317
Washington, D.C. 20436

Address for Return of Issued Letter Rogatory:

Stuart W. Gold
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Fax: (212) 474-3700

ATTACHMENT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Microsoft Corporation,

Plaintiff (Complainant),

v.

Barnes & Noble, Inc., barnesandnoble.com
LLC, Hon Hai Precision Industry Co., Ltd.,
Foxconn Electronics, Inc., Foxconn Precision
Component (Shen Zhen) Co. Ltd., Foxconn
International Holdings Ltd., Inventec
Corporation,

Defendants (Respondents).

Civil Action No. Misc. _____

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
(LETTER ROGATORY)**

The United States District Court for the District of Columbia presents its compliments to the Appropriate Judicial Authority of Canada, and requests international judicial assistance to obtain evidence to be used at trial in a pending administrative proceeding as approved by this Court in the above-captioned matter. This Court has authority to submit this Letter Rogatory under 28 U.S.C. §§ 1651 and 1781(b)(2).

Specifically, this Court requests that the Appropriate Judicial Authority of Canada, by the proper and usual process of Canada's courts, compel the appearance of MOSAID Technologies Incorporated, 11 Hines Road, Suite 203, Ottawa, Ontario, Canada K2K 2X1 ("MOSAID"), to testify under oath through John Lindgren, the Chief Executive Officer of MOSAID, the person most knowledgeable about the topics below, and to compel the production of the documents identified below from MOSAID.

Based on the representations made by Respondents Barnes & Noble, Inc. and barnesandnoble.com llc (collectively, "Barnes & Noble"), this Court believes that

justice cannot be served between the parties in the above-captioned matter unless the evidence requested herein is made available by the Appropriate Judicial Authority of Canada for use in an investigation being conducted by the International Trade Commission into whether Barnes & Noble's Nook and Nook Color infringe patents owned by Microsoft. The Court believes that MOSAID has knowledge regarding material facts and is in possession of documents that are highly relevant to Barnes & Noble's patent misuse defense that cannot be obtained without the assistance of the Appropriate Judicial Authority. Barnes & Noble attempted to obtain this information from MOSAID's United States subsidiary or have MOSAID directly produce the documents and furnish its corporate witness for deposition on the topics requested herein. But MOSAID's United States subsidiary moved to quash the subpoena served upon it and indicated that MOSAID was unwilling to provide the information voluntarily. Thus, Barnes & Noble had no other option but to seek international judicial assistance.¹

In light of the foregoing, this Court respectfully requests that the Appropriate Judicial Authority of Canada give this matter urgent attention in order that the evidence requested herein may be obtained before the period for fact discovery concludes on December 14, 2011, and available for use at trial on February 6, 2012.

I. SUMMARY OF THIS ACTION

The nature of the proceeding for which the evidence is requested is a civil patent infringement action based upon an amended verified complaint filed by Microsoft Corporation ("Microsoft") on April 18, 2011. The complaint alleges that Barnes &

¹ The documents and testimony set forth below extend beyond those likely to be in the possession or knowledge of the opposing party in this action, Complainant Microsoft Corporation ("Microsoft").

Noble, Inc., barnesandnoble.com LLC, Foxconn Electronics, Inc., Foxconn Precision Component (Shen Zhen) Co. Ltd., Foxconn International Holdings Ltd. and Hon Hai Precision Industry Co., Ltd. and Inventec Corporation (“Respondents”) import, sell for importation and/or sell within the United States after importation certain handheld electronic computing devices, related software and components thereof that allegedly infringe U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551 and U.S. Patent No. 6,957,233, in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). As a remedy, Microsoft seeks an injunction barring importation of the allegedly infringing devices, software and components.

The Tariff Act of 1930 prohibits importing goods into the United States that infringe a United States patent, among other things. Pursuant to Microsoft’s complaint, the Commission instituted Investigation No. 337-TA-769, which was assigned to Administrative Law Judge Theodore R. Essex to preside over pretrial matters, conduct a trial and issue an initial determination on the merits of the Investigation. The initial determination of Judge Essex is subject to possible review by the Commission, with a right of appeal to the U.S. Court of Appeals for the Federal Circuit and further appeal to the Supreme Court of the United States.

Respondents have raised several defenses against Microsoft’s allegations of patent infringement, including patent misuse, non-infringement, invalidity of the patents, unenforceability of the patents, public interest and lack of domestic industry. This Letter Rogatory is intended to obtain information material to the patent misuse defense asserted by Barnes & Noble. As part of that defense, Barnes & Noble has alleged that Microsoft is using its licensing practices to broaden improperly the scope of

its patent grant in an attempt to dominate open source mobile operating systems (like the one Barnes & Noble's handheld devices use) that threaten Microsoft's monopoly in personal computer ("PC") operating systems. Information about Microsoft's arrangement with MOSAID—which Barnes & Noble claims was entered into to facilitate Microsoft's strategy of leveraging its patents with anticompetitive effect—is necessary in the interest of justice for Barnes & Noble to defend fairly against the allegations made by Microsoft on the basis of patent misuse.

Specifically, Microsoft and Nokia Corporation ("Nokia") recently entered into an agreement with MOSAID to share in royalties derived from licensing (or suing those that do not take a license) approximately 2,000 Nokia patents acquired by MOSAID. On September 1, 2011, MOSAID acquired Core Wireless Licensing S.a.r.l. ("Core Wireless"), a company which holds a portfolio of 400 patent families, consisting of 2,000 wireless patents and patent applications originally filed by Nokia. Nokia had previously assigned its patents to a trust, which then assigned the patents to Core Wireless. Microsoft secured a license in the Nokia patents acquired by MOSAID.

Barnes & Noble believes that the MOSAID deal is a key element of Microsoft's horizontal partnership with Nokia, which was announced earlier this year, and included an agreement by Nokia to replace its current operating system with the Windows Phone operating system. One of the publicly stated motivations for the Microsoft-Nokia partnership was to combine the parties' respective patent portfolios and to coordinate their offensive use of patents directed at open source operating systems, specifically including the Android™ Operating System ("Android"). Microsoft's new deal with MOSAID—which began negotiations around the time the Microsoft-Nokia partnership was announced—appears to be the mechanism by which Microsoft and Nokia

will use Nokia's patents to attack Android-based devices that threaten Microsoft's monopoly. Thus, the MOSAID deal bears directly on Barnes & Noble's patent misuse defense.

To develop these facts further, Barnes & Noble seeks testimony and documents about MOSAID's business arrangement with Microsoft and Nokia, as well as the connection between Microsoft's demand that Barnes & Noble enter into a licensing agreement to use the Android Operating System, and its coordinated intellectual property strategy with MOSAID and Nokia. Any materially relevant evidence uncovered as a result of this Letter Rogatory will be adduced at trial, if admissible.

II. DOCUMENTS AND TESTIMONY REQUESTED

This Court requests the Appropriate Judicial Authority of Canada to compel MOSAID to produce to Barnes & Noble documents responsive to the requests for production in Addendum A to this Letter Rogatory, to the extent that they are in the possession, control or power of MOSAID and are not privileged under the applicable laws of Canada or the United States. This Court also requests the Appropriate Judicial Authority of Canada to compel MOSAID to make Mr. Lindgren, the person most knowledgeable about the topics listed in Addendum B to this Letter Rogatory, to appear and give a deposition on oral examination concerning those topics.

In addition to the privileges applicable to MOSAID under the Canadian laws, under the laws of the United States Mr. Lindgren may refuse to answer any question if such answer would subject him to a real and appreciable danger of criminal liability in the United States. Likewise, Mr. Lindgren may refuse to answer a question or produce a document if such answer or document would disclose a confidential

communication between him and MOSAID's attorney(s) in connection with seeking legal advice.

The Court also understands the confidential nature of the documents requested from MOSAID, and there is a protective order in this case to protect the confidentiality of any documents MOSAID produces. The protective order is Addendum C to this Letter Rogatory.

III. SPECIAL METHODS AND PROCEDURES REQUESTED TO BE FOLLOWED

To the extent permitted by the applicable laws of Canada, this Court respectfully requests that the Appropriate Judicial Authority of Canada require that the following methods and procedures be followed in connection with the deposition and document production requested herein:

- a. The examination be conducted orally;
- b. The parties' legal representatives or their designees and a stenographer be permitted to be present during the examination;
- c. There be excluded from the examination all persons other than the parties' legal representatives or their designees, a stenographer, and any judicial officer of Canada;
- d. The stenographer be permitted to record verbatim the examination;
- e. The attorneys from the law firm of Cravath, Swaine & Moore LLP, acting as legal representatives of Barnes & Noble, or their designees, be permitted to conduct the examination;
- f. The attorneys conducting the examination be permitted to ask questions regarding the topics listed in Addendum B; or, if a judicial officer is conducting the examination, the parties' legal representatives or their designees be permitted to submit questions to that officer for presentment to the witness;
- g. Seven (7) hours be allotted for the examination of the witness; and
- h. The witness be examined as soon as practicable, but before December 14, 2011, the date for the close of discovery; and the documentary evidence be

produced or provided for inspection and copying at least ten (10) days before the examination.

IV. RECIPROCITY AND REIMBURSEMENT FOR COSTS

This Court stands ready to extend similar assistance to the judicial tribunals of Canada. To the extent that there are expenses associated with providing assistance in response to this Letter Rogatory, this Court will see that the Appropriate Judicial Authority of Canada is reimbursed by Barnes & Noble.

Dated: _____, 2011
Month, Day

The Honorable _____
United States District Court Judge
U.S. District Court for the District of Columbia

ADDENDUM A

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 9

All documents, including any document or thing exchanged between MOSAID and Microsoft or Nokia, relating to any possible infringement claims involving Barnes & Noble's Nook™ and Nook Color™ products.

REQUEST FOR PRODUCTION NO. 10

All documents relating to the agreement entered into by MOSAID and Core Wireless on or about September 1, 2011, including MOSAID's strategy or rationale regarding its decision to acquire Core Wireless, the patent portfolio of Core Wireless and the licensing of the patent portfolio of Core Wireless.

REQUEST FOR PRODUCTION NO. 11

All documents relating to MOSAID's revenue sharing arrangement with Microsoft and Nokia, announced on or about September 1, 2011.

REQUEST FOR PRODUCTION NO. 12

All documents, including any document exchanged between MOSAID and Microsoft or Nokia, relating to U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551, U.S. Patent No. 6,957,223, U.S. Patent No. 5,579,517, U.S. Patent No. 5,652,913, U.S. Patent No. 5,758,352, U.S. Patent No. 6,791,536 and U.S. Patent No. 6,897,853, or to any patent that Microsoft or MOSAID believes controls or dominates the Android™ Operating System.

REQUEST FOR PRODUCTION NO. 13

All documents since January 1, 2010 relating to any evaluation, assessment or analysis of MOSAID's offensive or defensive use of patent rights concerning mobile

devices or tablet computers, including mobile devices or tablet computers running open source operating systems.

REQUEST FOR PRODUCTION NO. 14

All documents relating to any discussions or analyses of any potential role played or to be played by Microsoft or Nokia in licensing or asserting MOSAID's patents.

REQUEST FOR PRODUCTION NO. 15

All documents since January 1, 2010 relating to communications between or among MOSAID and Microsoft or Nokia, relating to the Android™ Operating System.

REQUEST FOR PRODUCTION NO. 16

All documents since January 1, 2010, including any document exchanged between MOSAID and Microsoft or Nokia, relating to Nokia's or Microsoft's plans, strategies or efforts to increase their collective share or individual shares of the mobile device or mobile operating system markets.

ADDENDUM B

DEPOSITION TOPICS

1. The subject matter of the documents produced in response to the requests in Addendum A to this Letter Rogatory.

2. Any relationship between MOSAID and Barnes & Noble's Nook™ and Nook Color™ products, including any alleged infringement by Barnes & Noble of any other Microsoft or MOSAID patent.

3. The agreement entered into by MOSAID and Core Wireless on or about September 1, 2011, including MOSAID's strategy or rationale regarding its decision to acquire Core Wireless, the patent portfolio of Core Wireless and the licensing of the patent portfolio of Core Wireless.

4. MOSAID's revenue sharing arrangement with Microsoft and Nokia, announced on or about September 1, 2011.

5. U.S. Patent No. 5,778,372, U.S. Patent No. 5,889,522, U.S. Patent No. 6,339,780, U.S. Patent No. 6,891,551, U.S. Patent No. 6,957,223, U.S. Patent No. 5,579,517, U.S. Patent No. 5,652,913, U.S. Patent No. 5,758,352, U.S. Patent No. 6,791,536 and U.S. Patent No. 6,897,853, or any patent that MOSAID, Microsoft or Nokia believes controls or dominates the Android™ Operating System.

6. Any evaluation, assessment or analysis since January 1, 2010 of MOSAID's offensive or defensive use of patent rights concerning mobile devices, tablet computers or PCs, including mobile devices or tablet computers running open source operating systems.

7. Any discussions or analyses of any potential role played or to be played by Microsoft or Nokia in licensing or asserting MOSAID's patents.

8. Any relationship between MOSAID and Microsoft and Nokia relating to the Android™ Operating System since January 1, 2010.

9. Nokia's or Microsoft's plans, strategies or efforts to increase their collective share or individual shares of the mobile device or mobile operating system markets since January 1, 2010.

ADDENDUM C

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

ORDER NO. 1: PROTECTIVE ORDER

(April 25, 2011)

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

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.



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 Handheld Electronic Computing Devices, Related Software, and Components Thereof*, Investigation No. 337-TA-769, 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 _____

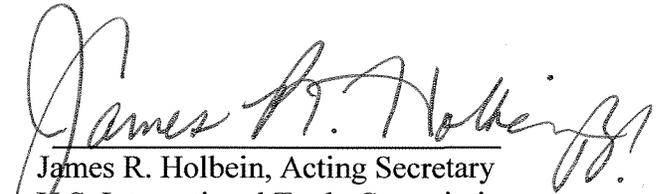
Firm or affiliation _____

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER 1** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on April 25, 2011.


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

On Behalf of Complainant Microsoft Corporation:

Jonathan J. Engler, Esq.
ADDUCI MASTRIANI & SCHAUMBERG LLP
1200 17th Street, NW, 5th Floor
Washington, DC 20036

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

On Behalf of Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC:

Marcia H. Sundeen, Esq.
KENYON & KENYON, LLP
1500 K Street, NW
Washington, DC 20005

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

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

CERTIFICATE OF SERVICE – PAGE TWO

Respondents:

Hon Hai Precision Industry Co., Ltd.
2 Zihyou Street, Tucheng City
Taipei County; 236
Taiwan

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

Foxconn Electronics, Inc.
2 Zihyou Street, Tucheng City
Taipei County; 236
Taiwan

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

Foxconn Precision Component (Shenzhen) Co.Ltd
No. 2, East Ring Road
No. 10 Industrial Zone
Yousong, Longhua, Shenzhen
Guandong 518109
China

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

Foxconn International Holdings, Ltd
8F Peninsula Tower
538 Castle Peak Road
Cheung Sha Wan Kowloon
New Territories
Hong Kong

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

Inventee Corporation
Inventee Building
No. 66 Hou-Kang Street
Shin-Lin District
Taipei County, 111
Taiwan

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

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE -PAGE THREE

PUBLIC MAILING LIST:

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Kenneth Clair
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1100 Thirteenth Street, NW, Suite 200
Washington, D.C. 20005

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **RESPONDENTS BARNES & NOBLE, INC.'S AND BARNESANDNOBLE.COM LLC'S (1) MOTION FOR RECOMMENDATION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA TO ISSUE A LETTER ROGATORY FOR EVIDENCE FROM MOSAID TECHNOLOGIES INC. AND (2) REQUEST TO SHORTEN COMPLAINANT MICROSOFT CORPORATION'S AND THE STAFF'S TIME TO RESPOND** were served upon the following parties as indicated on this 16th 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

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U.S. International Trade Commission
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**Certain Handheld Electronic Computing Devices,
Related Software and Components Thereof**

337-TA-769

*Counsel for Respondent Hon Hai Precision Industry Co., Ltd.,
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/s/ Robert Greenfield
Robert Greenfield
Case Manager