

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. 24: GRANTING RESPONDENTS BARNES AND NOBLES, INC.'S  
AND BARNESANDNOBLES.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.**

(December 2, 2011)

On November 16, 2011, respondents Barnes and Nobles, Inc. and Barnesandnoble.com LLC (collectively "B&N") filed a motion seeking issuance of the attached Recommendation that the U.S. District Court for the District of Columbia issue a letter of request on behalf of B&N to obtain documents and deposition testimony from Mosaid Technologies Incorporated ("Mosaid") located in Ontario, Canada. (Motion Docket No. 769-034). Specifically, B&N seeks discovery from Mosaid because it is party to an agreement with complainant Microsoft Corporation and non-party Nokia Corporation to share in royalties derived from licensing Nokia's patents that were acquired by Mosaid. B&N argues that the requested discovery is relevant to its patent misuse defense.

The motion states that B&N contacted the Commission Investigative Staff, the other respondents and complainant Microsoft regarding the instant motion. The time period for responses has expired and, as of the date of this order, no responses were received.

The motion is hereby GRANTED. A copy of the recommendation is attached to this order as Attachment A. The original signed recommendation has been returned to B&N for appropriate action.

**SO ORDERED**

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

Theodore R. Essex  
Administrative Law Judge

# **ATTACHMENT A**

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**

**RECOMMENDATION FOR ISSUANCE OF A LETTER  
ROGATORY FOR INTERNATIONAL JUDICIAL ASSISTANCE**

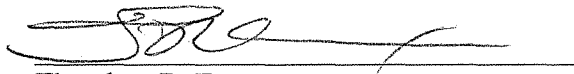
The undersigned Administrative Law Judge finds that the evidence that Respondents Barnes & Noble and barnesandnoble.com llc (collectively “Barnes & Noble”) seek pursuant to the Request for International Judicial Assistance (Letter Rogatory) (“Letter Rogatory”) is reasonably necessary to investigate fully 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 2 day of December, 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  
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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.<sup>1</sup>

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 &

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<sup>1</sup> 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

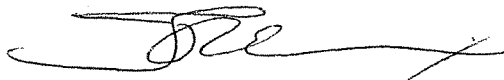
information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping 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 \_\_\_\_\_

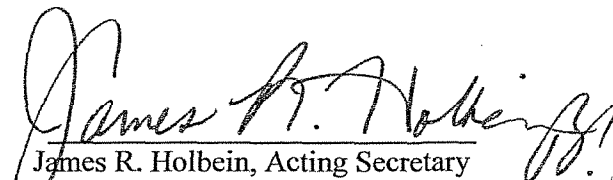
Firm or affiliation \_\_\_\_\_

**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 17<sup>th</sup> Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

( ) Via Hand Delivery  
( ) Via Overnight Delivery  
() Via First Class Mail  
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**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

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() Via First Class Mail  
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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

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Foxconn Electronics, Inc.  
2 Zihyou Street, Tucheng City  
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Taiwan

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 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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No. 10 Industrial Zone  
Yousong, Longhua, Shenzhen  
Guandong 518109  
China

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Foxconn International Holdings, Ltd  
8F Peninsula Tower  
538 Castle Peak Road  
Cheung Sha Wan Kowloon  
New Territories  
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**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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**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 24** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on **December 2, 2011**.

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

**On Behalf of Complainant MICROSOFT CORPORATION:**

V. James Adduci II, Esq. ( ) Via Hand Delivery  
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Washington, DC 20036 ( ) Other: \_\_\_\_\_

**On Behalf of Respondents BARNES & NOBLE, INC. and barnesandnoble.com LLC:**

Marcia H. Sundeen, Esq. ( ) Via Hand Delivery  
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1500 K Street, NW (  ) Via First Class Mail  
Washington, DC 20005 ( ) Other: \_\_\_\_\_

**On Behalf of Respondents HON HAI PRECISION INDUSTRY CO., LTD., FOXCONN ELECTRONICS, INC., FOXCONN PRECISION COMPONENT (SHENZHEN) CO., LTD. AND FOXCONN INTERNATIONAL HOLDINGS LTD.:**

Edward M. Lebrow, Esq. ( ) Via Hand Delivery  
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**On Behalf of Respondent INVENTEC CORPORATION:**

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

**Inv. No. 337-TA-769**

**PUBLIC CERTIFICATE3 OF SERVICE – PAGE TWO**

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