

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC

Before the Honorable Theodore R. Essex  
Administrative Judge

In the Matter of

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

Investigation No. 337-TA-769

COMPLAINANT MICROSOFT CORPORATION'S MOTION TO CERTIFY TO THE  
COMMISSION A REQUEST FOR JUDICIAL ENFORCEMENT OF SUBPOENAS  
*DUCES TECUM* AND *AD TESTIFICANDUM* ISSUED TO GOOGLE INC.  
AND REQUEST FOR SHORTENED TIME TO RESPOND

Pursuant to Commission Rule of Procedure 210.32(g) and Ground Rule 4.6.2, Complainant Microsoft Corporation respectfully moves for the Administrative Law Judge to certify a request to the Commission for enforcement of the subpoenas *duces tecum* and *ad testificandum* issued to non-party Google Inc. ("Google") on October 4, 2011. Google has refused to comply with Request for Production Nos. 4-6, 15, and 16 of the subpoenas ("Requests"), which seek critical evidence not covered by the other Requests in the subpoenas. Google should be ordered to search for and produce non-privileged documents responsive to the Requests no later than November 25, 2011; to identify an appropriate witness to testify on the corresponding deposition topics no later than November 30, 2011; and to offer deposition dates for its witness before December 14, 2011. Google also should be ordered to produce documents current to the date of its responses, October 19, 2011, with supplementation as necessary. Microsoft requests a shortened period of time to respond to this motion for certification, to five days rather than ten, to provide further time for the Commission to seek judicial enforcement.

Pursuant to Ground Rule 3.2, Microsoft certifies that Microsoft and Google have made reasonable, good faith efforts to resolve this matter. At the time of filing this Motion, Microsoft and Google had not reached an agreement regarding production of information and documents responsive to Requests 4-6, 15, or 16, nor had an agreement been reached regarding witness identifications and deposition dates as to the corresponding deposition topics. Microsoft and Google also have not reached agreement as to the cutoff date for Google's production.

Accordingly, for the reasons set forth in the accompanying Memorandum, Microsoft respectfully requests that the Administrative Law Judge certify this Motion to the Commission for enforcement of the subpoenas, pursuant to Commission Rule 210.32(g) and Ground Rule 4.6.2. Additionally, because of the quickly approaching deadlines for summary determination motions and for completion of fact discovery, Complainants respectfully request that Google's response to this motion be due no later than November 15, 2011. To facilitate Google's response, an electronic copy of this Motion and the attached exhibits have been transmitted to counsel for Google via electronic mail.

Dated: November 9, 2011

Respectfully submitted,



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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

**MEMORANDUM IN SUPPORT OF COMPLAINANT MICROSOFT CORPORATION'S  
MOTION TO CERTIFY TO THE COMMISSION A REQUEST FOR JUDICIAL  
ENFORCEMENT OF SUBPOENAS *DUCES TECUM* AND *AD TESTIFICANDUM*  
ISSUED TO GOOGLE INC. AND REQUEST FOR SHORTENED TIME TO RESPOND**

Pursuant to Ground Rule 3.1 (Order No. 2), Complainant Microsoft Corporation ("Microsoft") respectfully submits this Memorandum in support of its Motion to Certify to the Commission a Request for Judicial Enforcement of Its Subpoenas *Duces Tecum* and *Ad Testificandum* Issued to Google Inc. ("Google") and Request for Shortened Time to Respond, by requiring Google to search for and produce documents responsive to Request for Production Nos. 4-6, 15, and 16 ("Requests") of the subpoena *duces tecum* (Ex. A) and the corresponding deposition topics listed in the subpoena *ad testificandum* (Ex.A), and to produce documents current to the date of Google's responses and objections to the subpoenas.

Google refuses to search for documents responsive to Requests 4-6, 15, or 16, or to produce a witness to testify regarding deposition topics 4-6, 15, or 16. These Requests relate to whether, as required by Federal Circuit precedent, Respondents Barnes & Noble, Inc. and barnesandnoble.com, LLC (collectively "Barnes & Noble") can meet their burden of demonstrating that Microsoft's alleged patent misuse has had an anticompetitive effect in a

relevant market. As the distributor of the Android mobile operating system and leader of the Android Open Source Project, Google can be expected to possess evidence regarding the purported impact of any alleged conduct on Android's distribution, as well as Android's position over time compared to other mobile operating systems and desktop PC operating systems.

Google also has refused to produce any documents generated after October 5, 2011, the date the subpoenas were served on Google. This refusal ignores the subpoena *duces tecum's* instructions and will exclude critical evidence that has been generated after the date of the subpoena's service. For example, Larry Page, Google's chief executive officer, reportedly was asked by an analyst in a quarterly earnings call on October 13, 2011, about the patent litigation against Android that Barnes & Noble claims has an anticompetitive effect. Mr. Page responded, "[w]e're seeing no signs that that's effective . . . *If anything, our position is getting stronger.*" (See Ex. B, Jay Greene, *Google's Page Says Android Attacks Have No Impact*, CNET NEWS (Oct. 13, 2011), *available at* [http://news.cnet.com/8301-1023\\_3-20120137-93/googles-page-says-android-attacks-have-no-impact/](http://news.cnet.com/8301-1023_3-20120137-93/googles-page-says-android-attacks-have-no-impact/) (last visited Nov. 7, 2011) (emphasis added)).

Google's refusals deprive Microsoft of critical information necessary to fully defend against Barnes & Noble's baseless misuse claims, and prevent the Administrative Law Judge and the Commission from reviewing a full and complete record of the relevant facts. Accordingly, Microsoft seeks to enforce the subpoenas under ITC Rule 210.32 and Ground Rule 4.6.2. Microsoft also requests a shortened period of time to respond to this motion for certification, to five days rather than ten. Such a shortened time is necessary so that the Commission may obtain judicial enforcement in advance of the deadline for summary determination motions and the December 14, 2011, misuse discovery deadline.

## I. FACTUAL BACKGROUND

The Administrative Law Judge issued the subpoenas on October 4, 2011, ordering that Google move to quash or produce documents by ten days after service (which occurred the next day). (*See* Ex. A.) Requests 4-6, 15, and 16 of the subpoenas seek information regarding whether the alleged conduct has had any anticompetitive effect in a purported relevant market. (*Id.* at 8-10 and 6-8, respectively, of the subpoenas *duces tecum* and *ad testificandum*.) These Requests seek different information than the other requests in the subpoenas, as to which Google is producing documents. The outstanding Requests are as follows (with strikethrough and underline indicating subsequent agreed edits):

- **REQUEST FOR PRODUCTION NO. 4:** All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the actual or potential impact, on Android distribution, of patents held by Microsoft, ~~Apple Inc., Oracle Corp., or any other entity.~~
- **REQUEST FOR PRODUCTION NO. 5:** All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of actual, potential, or threatened patent infringement lawsuits by Microsoft related to Android.
- **REQUEST FOR PRODUCTION NO. 6:** All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.
- **REQUEST FOR PRODUCTION NO. 15:** All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.
- **REQUEST FOR PRODUCTION NO. 16:** All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems from Microsoft.

Microsoft agreed to several extensions of time and limitations on the Requests at issue in order to lessen any purported burden on Google, and repeatedly offered to consider any specific limitations Google might suggest if its searches turned up an unreasonable number of

purportedly privileged documents. (See Exs. C through K.) Nevertheless, on November 3 Google informed Microsoft that it would not search for documents responsive to the outstanding Requests, and for the first time indicated that it would not produce any documents generated after the October 5 date of Microsoft's subpoenas. (See Ex. L.)

## II. APPLICABLE STANDARDS

"[T]he scope of discovery in section 337 investigations is broad." *Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices*, Inv. No. 337-TA-506, Order No. 32, 2004 WL 3383517, at 2 (Dec. 22, 2004). Parties may obtain discovery regarding any matters relevant to the claims or defense of any party in the investigation. 19 C.F.R. § 210.27(b). Discoverable matter includes relevant material and any information reasonably calculated to lead to the discovery of admissible evidence. *Id.*; see also *Certain Authentication Systems, Including Software and Handheld Electronic Devices*, Inv. No. 337-TA-697, Order No. 8, 2010 WL 1553763 (Apr. 15, 2010). Non-party witnesses are subject to the same scope of discovery as a party. *Certain Encapsulated Integrated Circuit Devices and Products Containing Same*, Inv. No. 337-TA-501, Order No. 29, 2004 WL 873598 (Apr. 13, 2004). Indeed, "[t]he law favors liberal discovery, including discovery of third parties, to facilitate the fact-finding function of the Commission in Section 337 Investigations." *Certain Hardware Logic Emulations Systems*, Inv. No. 337-TA-383, Order No. 42, 1996 WL 965375, at 9 (Sept. 6, 1996).

Due to the rapid pace of Commission investigations, timely production of requested information is paramount. *Certain Diltiazem Hydrochloride and Diltiazem Preparations*, Inv. No. 337-TA-349, Order No. 18, 1993 WL 852742 (Aug. 17, 1993). The Commission has admonished against delay tactics, and compelled production of outstanding materials as a result.

*See Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials*, Inv. No. 337-TA-319, Order No. 24, 1991 WL 788600 (Feb. 21, 1991).

### III. ARGUMENT AND AUTHORITIES

#### A. The Subpoenaed Information and Documents are Relevant to Barnes & Noble's Patent Misuse Claims

As the Federal Circuit has repeatedly affirmed, the "key inquiry" for patent misuse is whether the patentee "has impermissibly broadened the physical or temporal scope of the patent grant and has done so *in a manner that has anticompetitive effects.*" *Princo Corp. v. Int'l Trade Comm'n*, 616 F.3d 1318, 1328 (Fed. Cir. 2010) (en banc) (emphasis added); *see also id.* at 1334 ("Princo urges us to overrule the line of authority in this court holding that patent misuse requires a showing that the patentee's conduct had anticompetitive effects. We decline to do so."). The parties do not dispute that Barnes & Noble must demonstrate anticompetitive effects in a relevant market. *See* Response of Barnes & Noble to Microsoft Corp.'s Motion to Strike, Docket No. 769-002 (Doc. ID 452733), at 9 ("The 'key inquiry' for a patent misuse defense is whether 'the patentee has impermissibly broadened the physical or temporal scope of the patent grant with anticompetitive effect'"), quoting *B. Braun Med., Inc., v. Abbott Labs., Inc.*, 124 F.3d 1419, 1426 (Fed. Cir. 1997); *see also* Staff's Response to Microsoft Corp.'s Motion to Strike, Docket No. 769-001 (Doc. ID 452780), at 6 ("B&N must show . . . that there is an anticompetitive effect in a relevant market."), citing *Princo*, 616 F.3d at 1331.

Attempting to meet its burden, Barnes & Noble claims that Microsoft's alleged conduct "limit[s] competition for devices . . . that employ the Android Operating System." Response of Barnes & Noble to the Amended Verified Complaint of Microsoft Corporation ("B&N Resp. to Compl.") at ¶ 40. Barnes & Noble alleges that "Microsoft's activities have a significant, wide-felt, and highly detrimental anticompetitive effect and restrain competition in the market for

mobile operating systems by suppressing the use and development of open source mobile operating systems, including the Android Operating System." *Id.* at ¶ 49. According to Barnes & Noble's baseless allegations, "Microsoft is attempting to minimize, or eliminate competition, for devices . . . that employ the Android Operating System and other open source operating systems, that pose a threat to Microsoft's monopoly in the PC operating system market." *Id.* at ¶ 56. Lastly, Barnes & Noble alleges that Microsoft "has market power with respect to mobile operating systems" *Id.* at ¶ 54.

Google is the leader of the Android Open Source Project, which develops, licenses, and distributes Android to Barnes & Noble and other device manufacturers. (*See* Ex. N, "Welcome to Android," Android Open Source Project Website, <http://source.android.com/> (last visited Nov. 7, 2011) ("Android is an open-source software stack for mobile devices, and a corresponding open-source project led by Google.")). Google therefore can be expected to have evaluated whether, as Barnes & Noble claims, Microsoft's alleged conduct has had any business effect on Android distribution. Statements from leading Google executives indicate that Google indeed generates such business evaluations. For example, as noted above, Larry Page, Google's chief executive officer, recently stated that "[w]e're seeing no signs that [patent litigation against Android is] effective . . . *If anything, our position is getting stronger.*" (Ex. B) (emphasis added).

Google also can be expected to possess evidence relating to whether, as claimed by Barnes & Noble, Android somehow "pose[s] a threat to Microsoft's monopoly in the PC operating system market." B&N Resp. to Compl. at ¶ 54. Android's purported developer, Andy Rubin, now is Google's Senior Vice President of Mobile and is in charge of Android development. Mr. Rubin and other senior Google executives will possess evidence relating to

Android's position relative to other mobile operating systems from Microsoft and whether Google somehow intends Android to compete with PC operating systems.

Evidence demonstrating a lack of anticompetitive effect on Android would dispose of Barnes & Noble's patent misuse defense. *See Princo*, 616 F.3d at 1334 ("[t]o sustain a misuse defense . . . a factual determination must reveal that the overall effect of the license tends to restrain competition unlawfully in an appropriately defined relevant market"). Accordingly, Requests 4-6, 15, and 16 of Microsoft's subpoenas *duces tecum* and *ad testificandum* to Google are narrowly targeted at obtaining Google's business evaluations of the purported impact of the alleged conduct on Android distribution, as well as its analysis of purportedly relevant markets. Yet despite their clear relevance in light of Barnes & Noble's claims and established case law, Google refuses to produce any documents relating to its own assessment of whether the alleged conduct has had any effect on the Android operating system that Google distributes.<sup>1</sup> Google's refusal continues despite Microsoft's repeated good-faith efforts to reach reasonable compromises intended to lessen any purported burden on Google as a non-party to this Investigation. Given the importance of this evidence to Microsoft's ability to defend against Barnes & Noble's claims and the ALJ's factfinding mission, the motion to enforce the subpoenas should be certified to the Commission and judicial enforcement should be obtained.<sup>2</sup>

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<sup>1</sup> As of filing this Motion, Microsoft had not yet received Google's first production of documents, which was sent by overnight mail on Nov. 8, 2011, and is assumed to be responsive only to Requests 1-3, 7-12, and 17, i.e., the requests which are not at issue.

<sup>2</sup> Moreover, upon information and belief, Google has provided assistance to Barnes & Noble in defending against Microsoft's Complaint. If that is the case, Google cannot help develop Barnes & Noble's patent misuse claims behind the scenes, and then refuse to produce documents related to those claims in this Investigation.

**B. Google Also Must Comply With the  
Subpoena *Duces Tecum*'s Time Instruction**

The subpoena *duces tecum* instructed that "[t]he information sought is to be current to the date of Google's response. However, all requests for production are of a continuing nature and supplemental responses are in accordance with Commission Rule 210.27(c)." (*See* Ex. A, subpoena *duces tecum* at 7.) Nevertheless, Google informed Microsoft on November 3, five days prior to the deadline for production of documents and nearly one month after the subpoenas were served, that it would not produce documents "produced after the date that Microsoft's subpoena was served." (*See* Ex. L.)

There is no basis for Google to refuse to comply with the subpoena's instructions as to time. During the period since the subpoenas were served, it has become apparent from Google's public pronouncements described above that it continues to generate internal business evaluations of the alleged conduct's purported impact on Android distribution.

Microsoft therefore seeks an order compelling Google to produce documents current to the date of Google's response to the subpoenas—October 19, 2011—with supplementary responses as necessary to comply with Commission Rule 210.27(c) should it become apparent that Google generated critical and relevant information after that date. Such a requirement imposes no undue burden on Google and places it in the same position with respect to production as any other party or third party in this Investigation. Conversely, the only purpose that can be served by limiting Google's response to the October 5 date of service is to avoid producing evidence that, on its face, may prove damaging to Barnes & Noble's misuse defense by undercutting any argument that Android has suffered anticompetitive harm.

**C. Google Cannot Avoid Its Responsibility to Search For and Produce Documents By Claiming Privilege Concerns**

As detailed above, the Requests at issue in this motion seek "business evaluations, assessments, strategy discussions, or analyses" relating to anticompetitive effects and the purported relevant markets. Like any other third party responding to discovery requests, Google is under an obligation to search for responsive documents, and create a privilege log describing documents it discovers and withholds as privileged or work product protected. Google is a large and sophisticated corporation that is well experienced at responding to discovery and fully capable of generating the requisite log in response to Microsoft's document requests.

In keeping with its efforts to reach reasonable, good-faith compromises with Google, however, Microsoft suggested to Google that it limit its search to the files of only nine business custodians, including Mr. Page; Andy Rubin (Google's Senior Vice President of Mobile and executive in charge of Android development, and purported developer of the Android operating system); and an investor relations custodian to be designated by Google, in order to obtain evidence regarding the basis for statements to analysts regarding the purported business effect of patent litigation against Android.<sup>3</sup> (*See Ex. K.*)

Given these custodians' roles, the burden on Google of logging any privileged documents is significantly lessened.<sup>4</sup> Nevertheless, Microsoft repeatedly has confirmed to Google that it

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<sup>3</sup> The remaining six custodians included Eric Schmidt, Google's chairman and former CEO; Sergei Brin, Google's other co-founder; and the four custodians Google agreed to search with respect to Requests 1-3 and 7-12. (*See Ex. K.*)

<sup>4</sup> Microsoft's Requests are targeted at *business* "evaluations, assessments, strategy discussions, or analyses." Such business documents are unlikely to constitute attorney-client communications or attorney work product, even where an attorney may be included on a particular communication. *See U.S. v. Walker*, 243 Fed. App'x 621, 623 (7th Cir. 2007) ("[P]utting otherwise non-privileged business records . . . in the hands of an attorney . . . does not render the documents privileged or work product."); *Solis v. Food Employers Labor Relations Ass'n*, 644 F.3d 221, 232 (4th Cir. 2011) ("[M]aterials prepared in the ordinary course of

would be willing to engage in further meet and confer in the unlikely event that Google's searches generate an unreasonably large number of purportedly privileged documents. Google's refusal to even search for responsive documents suggests that its claims of excessive privilege issues are aimed at delaying and avoiding production of documents that lie at the core of the patent misuse issues in this Investigation.

**IV. CONCLUSION**

For the reasons stated above, Google should be ordered to substantially complete its production of documents responsive to Requests 4, 5, 6, 15, and 16 no later than November 25, 2011, to identify an appropriate witness to testify on the corresponding deposition topics no later than November 30, 2011, and to offer deposition dates for its witness before the December 14, 2011 fact discovery cutoff. Accordingly, Microsoft respectfully requests that the Administrative Law Judge grant its Motion to Certify to the Commission a Request for Judicial Enforcement of Its Subpoenas *Duces Tecum* and *Ad Testificandum* Issued to Google Inc. and Request for Shortened Time to Respond.

Dated: November 9, 2011

Respectfully submitted,



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business or pursuant to regulatory requirements or for other non-litigation purposes do not constitute documents prepared in anticipation of litigation protected by work product privilege.").

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# Exhibit A



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**VIA FEDERAL EXPRESS**

GOOGLE INC.  
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Re: Certain Handheld Electronic Computing Devices, Related  
Software and Components Thereof, Inv. No. 337-TA-769

To Whom It May Concern:

Enclosed please find Subpoenas *Ad Testificandum* and *Duces Tecum* and the Application for Issuance of Subpoena issued by Administrative Law Judge Essex of the International Trade Commission regarding the above-referenced investigation.

Please contact the undersigned (202-467-6300) if you have any questions regarding this matter.

OF COUNSEL  
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PAUL G HEGLAND  
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Sincerely,

Rowan E. Morris

\*admitted to a bar other than DC; practice limited to federal courts & agencies

HARVEY B FOX (1941-2010)

REM:tse  
Enclosures  
cc: See Certificate of Service  
MSFT300811-2.doc

AFFILIATE  
AM&S TRADE SERVICES LLC  
CARLOS MOORE, PRESIDENT

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

APPLICATION FOR SUBPOENAS *DUCES TECUM* AND  
*AD TESTIFICANDUM* TO GOOGLE INC.

Pursuant to 19 C.F.R. § 210.32, Complainant Microsoft Corp. ("Microsoft") hereby applies for the issuance of the attached subpoena *duces tecum* and subpoena *ad testificandum* to:

GOOGLE INC.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

The subpoena *duces tecum* requires Google Inc. ("Google") to produce documents described in Attachment A to the subpoena *duces tecum* at the time and place indicated thereon. The subpoena *ad testificandum* requires Google to designate one or more persons competent to testify on its behalf regarding the matters identified in Attachment A to the subpoena *ad testificandum* at the time and place indicated thereon. Issuance of the subpoenas is necessary because Google has knowledge relevant to this Investigation. The subpoenas are limited in scope to obtain only relevant information.

Specifically, the Barnes & Noble respondents allege that Microsoft's infringement claims are barred by the doctrine of patent misuse. Barnes & Noble Respondents' Response, Affirmative Defenses at ¶¶ 1-56 (Doc ID 450505) (May 10, 2011) (*see also* Barnes & Noble's

Unopposed Motion for Leave to Amend Response, Ex. A and B, Affirmative Defenses at ¶¶ 1-56 (Motion No. 769-006 (Doc ID 454025) (July 8, 2011), granted by Order No. 6) (hereinafter "Affirmative Defenses"). Barnes & Noble alleges that Microsoft abused its patent rights by "claiming that the Android Operating System™ generally infringes Microsoft's patents, and that all device manufacturers employing the Android Operating System™ must license Microsoft's patents." *Id.* at ¶ 39. Google leads the development, licensing, and distribution of the Android operating system. *See Android Open Source Project*, <http://source.android.com/> (last visited September 26, 2011) ("Android is an open-source software stack for mobile devices, and a corresponding open-source project led by Google.").

As Microsoft set forth in its motion to strike Barnes & Noble's patent misuse defense (*see generally* Motion No. 769-001 (Doc ID 452038)), the defense is deficient as a matter of both substantive law and applicable pleading requirements. For example, the Patent Act's safe harbor provisions, *see* 35 U.S.C. § 271(d), provide that a party having a good faith basis to believe that its patents are infringed may assert its patent rights against an alleged infringer for any asserted patent. *See, e.g., Mallinckrodt Inc. v. Medipart Inc.*, 976 F.2d 700, 709 (Fed. Cir. 1992) ("A patentee that has a good faith belief that its patents are being infringed violates no protected right when it so notifies infringers."). The documents and testimony requested in the subpoenas are relevant to Barnes & Noble's claim that Microsoft misused its patents in connection with the licensing negotiations with Barnes & Noble.

Discovery from Google is also relevant to Barnes & Noble's allegation that the patents asserted in this investigation cover "only trivial and non-essential design elements" of the Android operating system. Affirmative Defenses at ¶ 45. The requested discovery is intended to

obtain evidence regarding whether Google has contemplated or discussed design workarounds for any such elements in Android.

Finally, Microsoft set forth in its motion why Barnes & Noble's patent misuse theories do not adequately allege anticompetitive effects in a properly defined relevant market. *Princo Corp. v. Int'l Trade Comm'n.*, 616 F.3d 1318, 1340 (Fed. Cir. 2010) (en banc) (holding that except for certain tying arrangements and post expiration royalties, a party must show that the patent leveraging had "anticompetitive effects in the relevant market"). The requested discovery is relevant to whether any of the conduct Barnes & Noble alleges has had an anticompetitive effect in any relevant market.

Pursuant to Ground Rule 4.6.1, Microsoft will serve each subpoena on Google and all other parties to the Investigation on the next business day, at the latest, after the subpoena is issued. Further, Microsoft will notify Google and all other parties to the Investigation on that day about the contents of the subpoenas. Finally, Microsoft will submit to the Administrative Law Judge one copy of the issued subpoenas, the application, and the proofs of service to Google.

For the reasons set forth above, Microsoft respectfully requests that its application for issuance of the subpoenas be granted and the attached subpoenas be issued.

Dated: October 3, 2011

Respectfully submitted,



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UNITED STATES INTERNATIONAL TRADE COMMISSION  
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Before the Honorable Theodore R. Essex  
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In the Matter of

CERTAIN HANDHELD ELECTRONIC  
COMPUTING DEVICES,  
RELATED SOFTWARE, AND  
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Investigation No. 337-TA-769

SUBPOENA DUCES TECUM

**TO:** GOOGLE INC.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

TAKE NOTICE: By authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainant Microsoft Corp., Google Inc. ("Google") IS HEREBY ORDERED to produce at Woodcock Washburn LLP, Cira Centre, 12th Floor, 2929 Arch Street, Philadelphia, Pennsylvania 19104, at 9:00 a.m. Pacific Standard Time, on October 17, 2011, or at such other time and place agreed upon, all of the documents and things in its possession, custody or control which are listed and described in Attachment A hereto. Such production will be for the purposes of inspection and copying, as desired.

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

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

If any of the documents or things listed and described in Attachment A hereto are considered "confidential business information," as that term is defined in the Protective Order attached hereto, such documents or things shall be produced subject to the terms and provisions of the Protective Order.

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

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this \_\_\_ day of October, 2011.



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

## ATTACHMENT A

### DEFINITIONS

The following definitions shall apply throughout these requests for production, regardless whether upper or lower case letters are used, and shall have the broadest possible meaning under Commission Rule 210.27:

1. "Affiliate" or "Affiliates" of a company means all of that company's predecessors, predecessors-in-interest, successors, successors-in-interest, subsidiaries, parents, sister entities, entities under common ownership or control with the company, partnerships, joint ventures, divisions, related units, and any entity owned or controlled by any of the aforementioned entities.
2. "Android" or "Android platform" means the software environment comprising an operating system, middleware, applications, application framework, libraries, and runtime environment, as further explained at <http://developer.android.com/guide/basics/what-is-android.html> (last visited September 26, 2011).
3. "Android distribution" means Android licensing, as defined below, or the shipping of mobile devices, as defined below, with Android installed.
4. "Android licensing" or "Android licenses" refers to any distribution or other license granting device manufacturers, as defined below, the right to ship mobile devices with Android installed.
5. "And" or "or" is construed either conjunctively or disjunctively, whichever provides the broadest meaning possible for the particular context.
6. "Any" or "each" encompasses "all."
7. "Barnes & Noble" and "respondent(s)" means and refers to Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC, individually and collectively, including without

limitation all of their corporate locations, and all predecessors, predecessors in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with Barnes & Noble, Inc. and/or barnesandnoble.com LLC and others acting on behalf of Barnes & Noble, Inc. and/or barnesandnoble.com LLC.

8. "Commission" means United States International Trade Commission.

9. "Communication" means and refers to any transmission of information, in any form, via any medium, including without limitation documents incorporating summarizing or describing the contents of the transmission, meetings and discussions, telephone conversations, electronic communications, telegraphic communications, or any document containing a recording, transcription, summary, or description or identifying the time, place, subject matter, medium of transmission and/or participants in the transmission.

10. "Device manufacturers" means any importer, manufacturer, provider, reseller or other entity that markets mobile devices, as defined below, in the United States.

11. "Document" or "documents" are used in the broadest possible sense, and include:  
(a) any and all printed, written, taped, recorded, graphic, computerized printout, electronically stored, or other tangible matter of materials, from whatever source, however produced or reproduced or capable of being produced, whether in draft form or otherwise, whether sent or received or neither, including all writings, confirmations, wire transfers, correspondence, electronic mail communications, letters, papers, notebooks, statements, representations, affidavits, opinions, transcripts, summaries and recordings of telephone and other conversations or of interviews or of conferences, video and audio tapes and records of any kind, telegrams, telexes, facsimiles, cables, contracts, proposals, agreements, minutes, notations, typed or

handwritten notes, memoranda, analyses, projections, studies, evaluations, work papers, books, records, reports, diaries, journals, questionnaires, financial records, books of account, checks, check stubs, lists, logs, ledgers, spreadsheets, statistical records, brochures, sales and marketing materials, pamphlets, advertisements, circulars, press releases, calendars, graphs, charts, organization charts, sketches, diagrams, maps, drawings, photographs, microfilms, telephone logs, messages, films, summaries, digests, financial statements, computer-readable data compilations, and all other information or data records or compilations from which information or data records or compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form, including all underlying, supporting, or preparatory material and all information on computer drives or diskettes; (b) any and all originals, drafts, and copies that differ in any material respect from the original, including, without limitation, all marginal comments that appear on such documents; and (c) all attachments, enclosures, or documents affixed to or referenced in such documents. If copies of document are not identical by reason of any handwritten notations, initials, identification marks, or any other modification, each non-identical copy is a separate document within the meaning of this definition. The term "document" or "documents" includes, without limitation, documents kept by individuals in their desks or files, on their computers, at home or elsewhere.

12. "Google" means and refers to Google Inc., including without limitation all of its corporate locations, and all predecessors, predecessors in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with Google Inc. and others acting on behalf of Google Inc.

13. "Including" or "includes" means "including but not limited to" or "including without limitation."

14. "Microsoft" means Microsoft Corporation and all of its subsidiaries, current or former officers, directors, employees, agents, attorneys, and other representatives of any of them and all other persons acting or purporting to act on behalf of them.

15. "Microsoft/Nokia agreement" means the strategic agreement between Microsoft and Nokia Corp., announced on February 11, 2011. *See* <http://www.microsoft.com/presspass/press/2011/feb11/02-11partnership.msp>.

16. "Microsoft Patent(s)" means the patents-at-issue in the Present Investigation, namely the '372 Patent, the '522 Patent, the '780 Patent, the '551 Patent, and the '233 Patent (as defined below).

17. "Mobile device(s)" means any mobile telephone, smartphone, tablet computer or e-reader. "Mobile device(s)" does not include laptop, notebook, netbook, or desktop personal computers.

18. "Mobile operating system(s)" means any computer operating system designed to run primarily or exclusively on mobile devices, as defined above.

19. "Other Identified Patents" means U.S. Patent Nos. 5,579,517 ("the '517 patent"), 5,652,913 ("the '913 patent"), 5,758,352 ("the '352 patent"), 6,791,536 ("the '536 patent"), and 6,897,853 ("the '853 patent").

20. "Person" means any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other legal entity. The acts of a Person shall include the acts of directors, officers, owners, members, employees, agents, attorneys, and other representatives acting on the Person's behalf.

21. "Present Investigation" means *Certain Handheld. Electronic Computing Devices, Related Software, and Components Thereof*, Inv. No. 337-TA-769.

22. "Relating to" and "referring to" mean in whole or in part affecting, concerning, constituting, containing, embodying, reflecting, involving, describing, analyzing, identifying, mentioning, stating, referring directly or indirectly to, dealing with, or in any way pertaining to that subject, and shall be interpreted so as to encompass the scope of discovery set forth in Federal Rule of Civil Procedure 26(b)(1). For example, documents that "relate to" or "refer to" any given subject means all documents that constitute, deal with, refer to, describe, evidence, contain, discuss, embody, reflect, identify, state, or concern in any way, the subject or are in anyway pertinent to that given subject including, but not limited to, documents concerning the preparation of other documents.

23. The "'372 Patent" means U.S. Patent No. 5,778,372, entitled "Remote Retrieval and Display Management of Electronic Document with Incorporated Images" and issued on July 7, 1998.

24. The "'522 Patent" means U.S. Patent No. 5,889,522, entitled "System Provide Child Window Controls" and issued on March 30, 1999.

25. The "'780 Patent" means U.S. Patent No. 6,339,780, entitled "Loading Status in Hypermedia Browser Having a Limited Available Display Area" and issued on January 15, 2002.

26. The "'551 Patent" means U.S. Patent No. 6,891,551, entitled "Selection Handles in Editing Electronic Documents" and issued on May 10, 2005.

27. The "233 Patent" means U.S. Patent No. 6,957,233, entitled "Method and Apparatus for Capturing and Rendering Annotations for Non-modifiable Electronic Content" and issued on October 18, 2005.

28. "Thing" shall be construed under the broadest possible construction under the Federal Rules of Civil Procedure.

29. The plural includes the singular and the singular includes the plural, whichever makes the request more inclusive.

30. The singular and masculine form of a noun or pronoun is construed to include the plural, the feminine, or neuter form of the noun or pronoun, whichever is appropriate or whichever provides the broadest meaning possible for the particular context.

#### **INSTRUCTIONS**

1. At 9:00 a.m. Pacific Standard Time, on October 17, 2011, or at such other time and place agreed upon, Google shall produce for inspection and copying at Woodcock Washburn LLP, Cira Centre, 12th Floor, 2929 Arch Street, Philadelphia, PA 19104, documents and things that are responsive to these requests and that are in its possession, custody, or control, or the possession, custody, or control of its agents, representatives, or attorneys.

2. All requests for production must be answered fully and in writing, in accordance with Commission Rule 210.30, and signed by a duly empowered representative of Google.

3. Google shall produce responsive documents and things in the form and manner which they are kept in the normal course of business or shall identify the document request (and any subpart(s) thereof to which each document is responsive.

4. Where all or part of a responsive document is in a language other than English, and an English` translation exists with respect to any part of the document, Google shall produce both the original document and the translation.

5. For any document or thing responsive to any request set forth below that Google seek to withhold under a claim of privilege, it shall redact the information being withheld privilege and indicate the location of the redacted information on the produced document thing. Each document, thing, or part of any document or thing withheld under a claim privilege or for any other reason must be separately identified via a privileged document list. The privileged document list must identify each document separately, specifying for each document at least the following: (1) the date; (2) the author(s)/sender(s); (3) the recipient(s), including copy recipient(s); and (4) the general subject matter of the document. Absent agreement of the parties, the sender(s) and recipient(s) shall be identified by position and entity (corporation or firm, etc.) with which they are employed or associated. If the author/sender or recipient is an attorney or foreign patent agent, he or she shall be so identified. The type of privilege claimed must also be stated, together with certification that all elements of the claimed privilege have been met and not waived with respect to each document.

6. The information sought is to be current to the date of Google's response. However, all requests for production are of a continuing nature and supplemental responses are in accordance with Commission Rule 210.27(c).

These requests for production of documents are continuing in nature to the full extent permitted by 19 C.F.R. § 210.30. Google must promptly provide, by way of supplementary production, such additional documents and things as you may hereafter obtain that will ensure

the continued truthfulness, accuracy, completeness, and reliability of its answers to each of these requests.

## **REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1**

All documents reflecting or relating to communications with Barnes & Noble regarding the Microsoft Patents or Other Identified Patents.

### **REQUEST FOR PRODUCTION NO. 2**

All documents reflecting or relating to communications with Barnes & Noble regarding license negotiations between Barnes & Noble and Microsoft.

### **REQUEST FOR PRODUCTION NO. 3**

All agreements between Google and Barnes & Noble relating to Android, and all documents reflecting or relating to communications with Barnes & Noble regarding Android distribution or licenses.

### **REQUEST FOR PRODUCTION NO. 4**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the actual or potential impact, on Android distribution, of patents held by Microsoft, Apple Inc., Oracle Corp., or any other entity.

### **REQUEST FOR PRODUCTION NO. 5**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

**REQUEST FOR PRODUCTION NO. 6**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

**REQUEST FOR PRODUCTION NO. 7**

All documents reflecting or relating to business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

**REQUEST FOR PRODUCTION NO. 8**

All documents reflecting or relating to business discussions with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

**REQUEST FOR PRODUCTION NO. 9**

All documents reflecting or relating to Google's contemplation of, or business discussions with Barnes & Noble concerning, indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

**REQUEST FOR PRODUCTION NO. 10**

All documents reflecting or relating to Google's contemplation of, or business discussions with device manufacturers concerning, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

**REQUEST FOR PRODUCTION NO. 11**

All documents reflecting or relating to Google's contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing

Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

**REQUEST FOR PRODUCTION NO. 12**

All documents reflecting or relating to Google's contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

**REQUEST FOR PRODUCTION NO. 13**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

**REQUEST FOR PRODUCTION NO. 14**

All documents reflecting or relating to business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business Machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

**REQUEST FOR PRODUCTION NO. 15**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

**REQUEST FOR PRODUCTION NO. 16**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

**REQUEST FOR PRODUCTION NO. 17**

All documents reflecting or relating to historical and projected unit shipments, for the United States and worldwide, for Android or other mobile operating systems.

MSFT602311-2.doc

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

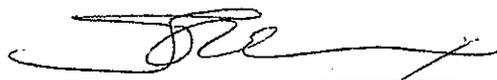
information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping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

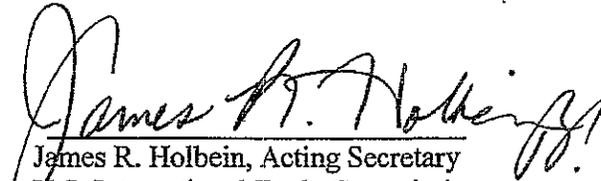
Firm or affiliation \_\_\_\_\_

**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  
 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: \_\_\_\_\_

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. 9: GRANTING AMENDED JOINT MOTION FOR ENTRY OF AN  
ADDENDUM TO THE PROTECTIVE ORDER RELATING TO  
PRODUCTION OF HIGHLY CONFIDENTIAL SOURCE CODE**

(August 3, 2011)

On July 27, 2011, complainant Microsoft Corporation ("Microsoft"); respondents Barnes & Noble, Inc. and barnesandnoble.com LLC (collectively, "Barnes & Noble"); respondents Foxconn Electronics, Inc., Foxconn Precision Component (Shen Zhen) Co., Ltd., Foxconn International Holdings Ltd. (collectively, "Foxconn"); respondent Hon Hai Precision Industry Co., Ltd. ("Hon Hai"); and respondent Inventec Corporation ("Inventec"), collectively referred to as "the Private Parties," filed a joint motion for the entry of an addendum to the Protective Order in this investigation to more particularly address the production of highly confidential source code during the discovery process. (Motion Docket No. 769-011.) The motion states that the Commission Investigative Staff does not oppose the motion.

The Private Parties seek to amend the Protective Order to provide appropriate additional protections for and to facilitate the orderly and efficient production of only relevant source code.

Good cause being shown and there being no opposition, Motion No. 769-011 is

hereby GRANTED. The Protective Order (Order No. 1) is hereby amended to include the provisions set forth in Attachment A.

**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

1. Documents, things or information that comprise a Party's confidential, proprietary and/or trade secret source code or object code may be designated by the Party producing them as "CONFIDENTIAL SOURCE CODE." Documents, things or information that include or are accompanied by confidential, proprietary and/or trade secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if such confidential, proprietary and/or trade secret source code or object code cannot reasonably be segregated from the document or thing.

(a) Subject to the following notice provisions and each producing Party's written objections to discovery requests (*e.g.*, as to relevance, over-breadth, undue burden, etc.) and/or requests to review CONFIDENTIAL SOURCE CODE, each producing Party shall make the responsive, relevant portions of its CONFIDENTIAL SOURCE CODE available for inspection during discovery and through the conclusion of the hearing in this action. Any single reviewing session (conducted during one business day or during consecutive business days of review) shall be conducted during regular business hours (9:00 A.M. to 5:00 P.M. local time) on five (5) calendar days written (including e-mail) notice, or during such other hours as may be mutually and reasonably agreed upon on reasonable notice to the producing Party.

(b) A list of names of persons who will view the relevant portions of the CONFIDENTIAL SOURCE CODE (in the private room referenced in subparagraph (d), below) will be provided to the producing Party in conjunction with the written notice requesting inspection of the CONFIDENTIAL SOURCE CODE. Each receiving Party shall be limited to at total of three (3) individuals that it chooses from its outside counsel of record in this investigation as its designees for viewing the CONFIDENTIAL SOURCE CODE in the private

inspection of the CONFIDENTIAL SOURCE CODE. Each receiving Party shall be limited to at total of three (3) individuals that it chooses from its outside counsel of record in this investigation as its designees for viewing the CONFIDENTIAL SOURCE CODE in the private room referenced in subparagraph (d), below, along with its approved (*see* subparagraphs (i) and (j), below) technical experts (up to a total of five (5) such experts, *see* below). For the sake of clarity, while those three outside counsel designees for each Party are the only outside counsel for a receiving Party permitted to enter the private room and review the CONFIDENTIAL SOURCE CODE on the SOURCE CODE COMPUTER, the Parties recognize and agree that after the CONFIDENTIAL SOURCE CODE is produced to the receiving Party all outside counsel for that receiving Party, who are authorized under the Protective Order in this Investigation to do so, are permitted to review the produced CONFIDENTIAL SOURCE CODE (pursuant to the terms of that Protective Order and this Addendum). The receiving Party shall maintain a daily log of the names of persons who enter the CONFIDENTIAL SOURCE CODE viewing room (see sub-paragraph (d) below) to view the CONFIDENTIAL SOURCE CODE and note on the log when these persons enter and depart. The producing Party shall be entitled to have a person observe all entrances and exits from the source code viewing room, to keep a log of same at its sole discretion, and to receive a copy of the log kept by the receiving Party, but shall not otherwise be entitled to observe the receiving Party's inspection.

(c) All CONFIDENTIAL SOURCE CODE produced pursuant to this Order will be made available by the producing Party at the following locations:

by Barnes & Noble, at the offices of Kenyon & Kenyon LLP, One Broadway, New York, NY 10004 or another location in New York, NY provided by Barnes & Noble;

by Microsoft, at the offices of Woodcock Washburn LLP, Cira Center,

Philadelphia, PA 19104; and

by other parties and third parties, at such location(s) as may be mutually agreed to by the producing party or third party and the requesting Party, or as otherwise ordered by the Administrative Law Judge.

(d) All CONFIDENTIAL SOURCE CODE portions will be made available in a private room, on a secured computer without Internet access or network access to other computers, as necessary and appropriate to prevent and protect against any unauthorized copying, transmission, removal, or other transfer of any of that source code outside or away from the computer on which that source code is provided for inspection (the "Source Code Computer"). No other computers or electronic devices of any sort shall be allowed in the private room at any time during the inspection. The producing Party will install such reasonable tools or programs as are necessary only to search the code produced on the Source Code Computer, or as reasonably requested by the receiving Party only to search that code (and the receiving Party may provide such tools or programs and request their installation on the SOURCE CODE COMPUTER if the producing Party does not have them or some reasonably similar searching program). The producing Party may object to the receiving Party's request to install such tools or programs if such installation and/or programs are unreasonable or unnecessary, in light of tools or programs to search the code already installed on the Source Code Computer. Further, the producing Party shall not be obligated to install tools or programs capable of compiling and running source code. To the extent the receiving Party provides the producing Party with tools or programs to install for use during a reviewing session, and no objection is made to same by the producing Party, any such tools or programs must be provided no later than five (5) business days in advance of the first reviewing session for which such installation is desired. Thereafter,

such tools or programs shall remain on the Source Code Computer throughout the discovery period, absent reasonable objection or agreement to the contrary.

(e) Up to three individuals from the receiving Party's outside counsel of record in this Investigation (*see* subparagraph (b), above) and its approved (*see* subparagraphs (i) and (j), below) technical experts, who have first complied with all paragraphs of the Protective Order in this Investigation, including paragraphs 3 and 4 thereof, shall be entitled to enter the private room, view the Source Code Computer and take hand-written notes relating to the CONFIDENTIAL SOURCE CODE, but none of them is permitted to copy that source code itself into the notes. All such hand-written notes must be clearly labeled as "CONFIDENTIAL SOURCE CODE, SUBJECT TO PROTECTIVE ORDER" and shall be subject to the provisions of sub-paragraph (j) below. No copies of all or any portion of the CONFIDENTIAL SOURCE CODE may leave the room in which it is inspected. Furthermore, no other written or electronic record of the CONFIDENTIAL SOURCE CODE is permitted except as otherwise provided herein.

(f) During inspection of the CONFIDENTIAL SOURCE CODE portions, the receiving Party's designated outside counsel in the private room may compile a list of such source code files (or portions thereof) to be produced. The receiving Party will only identify such files (or portions thereof) as are both relevant to the issues at hand in this Investigation and reasonably necessary to facilitate the receiving Party's preparation of the case, including (1) when reasonably necessary to prepare any filing with the Administrative Law Judge or Commission or to serve any pleadings or other papers on any other Party, or (2) to prepare other necessary case materials such as testifying expert reports, consulting expert written analyses, and related drafts and correspondences. For the duration of this case, in no event may the receiving

Party identify more than those files (or portions thereof) that are both relevant to the issues at hand in this Investigation and reasonably necessary to facilitate the receiving Party's preparation of the case, without prior written approval by the producing Party. Upon identification of such relevant and reasonably necessary information by the receiving Party, the producing Party shall print, append production numbers to, and label such files with the file's complete file path and the designation "CONFIDENTIAL SOURCE CODE." If the producing Party objects that identified files (or portions thereof) are not relevant and/or reasonably necessary, the producing Party shall make such objection known to the receiving Party within five (5) business days of the identification of any files by the receiving Party. If, after meeting and conferring, the producing Party and the receiving Party cannot resolve the objection, the receiving Party shall be entitled to seek a judicial resolution (through a written motion, with the producing Party having the opportunity to file a written opposition paper) of whether or not the identified CONFIDENTIAL SOURCE CODE in question is relevant to any issue at hand in this Investigation and reasonably necessary to any case preparation activity. In the absence of any objection, or upon resolution of any such dispute by the Administrative Law Judge, the producing Party shall provide one printed copy of the identified files (or portions thereof) to the receiving Party within five (5) business days of the identification of such files by the receiving Party or, if applicable, resolution of a dispute by the Administrative Law Judge. The printed pages shall constitute part of the CONFIDENTIAL SOURCE CODE produced by the producing Party in this action.

(g) Unless otherwise agreed in advance by the receiving and producing Parties in writing, following each reviewing session (conducted during one business day or during consecutive business days of review), the up to three (3) designated individuals from the

receiving Party's outside counsel of record in this Investigation and/or its approved technical experts in that room shall remove all notes, documents and any other materials from the room that may contain work product and/or attorney-client privileged information. The producing Party shall not be responsible for any items left in the room following each inspection session.

(h) The receiving Party will not copy, remove, or otherwise transfer any CONFIDENTIAL SOURCE CODE from the Source Code Computer in any manner. The receiving Party will not transmit any CONFIDENTIAL SOURCE CODE in any way from the producing Party's facilities or the offices of its outside counsel of record.

(i) Documents designated CONFIDENTIAL SOURCE CODE may only be viewed by or disclosed to the receiving Party's outside counsel of record in this Investigation (and their necessary, full-time support personnel employed internally at that counsel's firm) or the receiving Party's technical experts approved by the producing Party. The term "technical expert" as used herein shall mean the same as defined in paragraph 3 of the Protective Order in this Investigation, except that it is limited to the expert alone and shall not include any support staff for such an expert. Moreover, under no circumstances can CONFIDENTIAL SOURCE CODE of a producing Party be disclosed to in-house counsel or any in-house employee of a receiving Party.

(j) A receiving Party desiring to disclose information to a technical expert, who is first qualified under the Protective Order in this Investigation to review Confidential Business Information, shall give prior written notice to the producing Party or non-Party, who shall have ten (10) business days after such notice is given to object in writing to that proposed disclosure. A receiving Party desiring to make such a disclosure of CONFIDENTIAL SOURCE CODE information to a technical expert must provide the following information to the

producing Party with respect to each technical expert: (i) name, address, curriculum vitae, current employer, and employment (including consulting) history for the past five (5) years; (ii) a listing of cases in which the witness has testified as an expert at trial or by deposition within the preceding five (5) years; (iii) and a signed declaration from the identified technical expert, indicating that he or she has read this Order and agrees to comply with all of its provisions along with the existing provisions of the Protective Order in this Investigation, relative to any CONFIDENTIAL SOURCE CODE reviewed or received by the expert in this Investigation. No CONFIDENTIAL SOURCE CODE information shall be disclosed to such expert(s) until the later of the expiration of the foregoing notice period or until final resolution of the producing Party's objections to that disclosure, if any are made. If a producing Party objects to the disclosure of its CONFIDENTIAL SOURCE CODE to a given expert, such objections shall be resolved in the same manner as outlined in paragraph 11 of the Protective Order in this Investigation (regarding objections to disclosure of Confidential Business Information to a designated technical expert). In no event may a receiving Party designate more than five (5) technical experts to have access to a producing Party's CONFIDENTIAL SOURCE CODE.

(k) The outside counsel and technical experts (who have been approved to access source code under sub-paragraphs (i) and (j) above) for a receiving Party shall maintain and store any paper copies of the CONFIDENTIAL SOURCE CODE or notes related to such source code (as referenced in sub-paragraphs (e) and (f), above) at their offices in a manner that prevents duplication of or unauthorized access to that source code or notes, including, without limitation, storing that source code or notes in a locked room or cabinet at all times when those materials are not in use.

(l) The receiving Party's outside counsel of record in this Investigation may

make no more than five additional paper copies of any portions of the CONFIDENTIAL SOURCE CODE files identified pursuant to sub-paragraph (f), above, not including copies attached to court filings, and shall maintain a log of all copies of that source code (received from a producing Party) that are provided by the receiving Party to any qualified person. The log shall include the names of the recipients and reviewers of copies and locations where the copies are stored. Any paper copies of such source code shall be clearly designated CONFIDENTIAL SOURCE CODE and shall be stored or viewed only at (1) the offices of outside counsel of record in this Investigation for the receiving Party, (2) the offices of technical experts who have been approved to access source code under sub-paragraphs (i) and (j), above, (3) the site where any deposition is taken, (4) the Administrative Law Judge, or (5) any intermediate location necessary to transport the information to a hearing, trial, or deposition. Any such paper copies shall be maintained at all times in a locked and secure location. The producing Party shall not unreasonably deny a receiving Party's request to make (and log) additional copies, providing that the request is for good cause and for use that otherwise complies with this Order and the Protective Order in this Investigation. The producing Party shall be entitled to a copy of the log upon request, and at the conclusion of the Investigation.

(m) The receiving Party may include excerpts of a producing Party's CONFIDENTIAL SOURCE CODE in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or any drafts of these documents ("Source Code Documents"). The receiving Party shall only include such excerpts as are reasonably necessary for the purposes for which such part of that source code is used.

(n) To the extent portions of CONFIDENTIAL SOURCE CODE are quoted in a Source Code Document, either (1) the entire document will be stamped CONFIDENTIAL

SOURCE CODE or (2) those pages containing quoted source code will be separately bound, and stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice, and shall be treated as confidential business information pursuant to Commission Rule 210.5(b) (19 C.F.R. § 210.5(b)).

(o) All paper copies of CONFIDENTIAL SOURCE CODE shall be securely destroyed if they are no longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition). Copies of CONFIDENTIAL SOURCE CODE that are marked as deposition exhibits shall not be provided to the court reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.

(p) The receiving Party may not create electronic images, or any other images, of the CONFIDENTIAL SOURCE CODE from the paper copy for use on a computer (*e.g.*, may not scan the source code to a PDF, or photograph the code). The receiving Party may create an electronic copy or image of selected portions of the CONFIDENTIAL SOURCE CODE only when reasonably necessary to accomplish any filing with the Commission or to serve any pleadings or other papers on the producing Party (including expert reports). Images or copies of CONFIDENTIAL SOURCE CODE shall not be included in correspondence between the Parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent permitted herein.

(q) Upon the final termination of this Investigation, return and/or destruction of CONFIDENTIAL SOURCE CODE by a receiving Party to a producing Party shall be governed by paragraph 14 of the Protective Order in this Investigation. In addition, at the same time, a receiving Party shall provide the producing party with written confirmation of the

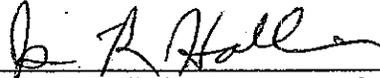
destruction of all notes taken in accordance with paragraphs (e) and (f) of this Order.

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 9** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on **August 3, 2011**.



James R. Holbein, Secretary to Commission  
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.  
**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  
( ) 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 Mail  
() Via First Class Mail  
( ) 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.  
**HAYNESBOONE**  
1614 L Street, NW, Suite 800  
Washington, DC 20036

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

On Behalf of Respondent INVENTEC CORPORATION:

Bijal V. Vakil, Esq.  
**WHITE & CASE LLP**  
3000 El Camino Real  
5 Palo Alto Square, 9<sup>th</sup> Floor  
Palo Alto, CA 94306

( ) 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 TWO**

**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: \_\_\_\_\_

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**

**SUBPOENA AD TESTIFICANDUM**

**TO:** GOOGLE INC.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

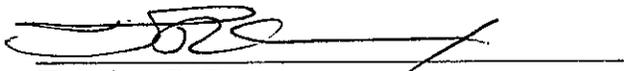
TAKE NOTICE: By authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainant Microsoft Corp., Google Inc. ("Google") IS HEREBY ORDERED to appear for purposes of deposition upon oral examination on November 1, 2011, at 9:00 a.m. Pacific Standard Time, at Woodcock Washburn LLP, Cira Centre, 12th Floor, 2929 Arch Street, Philadelphia, Pennsylvania 19104, or at such other time and place agreed on, concerning the subject matter set forth in Attachment A. Pursuant to Federal Rule of Civil Procedure 30(b)(6), Google shall designate one or more persons competent to testify on its behalf regarding the topics listed in Attachment A hereto.

This deposition will be taken before a Notary Public or other person authorized to administer oaths and will be recorded stenographically and by video and will continue from day to day until completed.

If any of Google's testimony is considered "confidential business information," as that term is defined in the Protective Order attached hereto, such testimony shall be so designated and treated according to the terms and provisions of the Protective Order.

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

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this 4<sup>th</sup> day of October, 2011.

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

## ATTACHMENT A

### DEFINITIONS

The following definitions shall apply throughout these requests for production, regardless whether upper or lower case letters are used, and shall have the broadest possible meaning under Commission Rule 210.27:

1. "Affiliate" or "Affiliates" of a company means all of that company's predecessors, predecessors-in-interest, successors, successors-in-interest, subsidiaries, parents, sister entities, entities under common ownership or control with the company, partnerships, joint ventures, divisions, related units, and any entity owned or controlled by any of the aforementioned entities.
2. "Android" or "Android platform" means the software environment comprising an operating system, middleware, applications, application framework, libraries, and runtime environment, as further explained at <http://developer.android.com/guide/basics/what-is-android.html> (last visited September 26, 2011).
3. "Android distribution" means Android licensing, as defined below, or the shipping of mobile devices, as defined below, with Android installed.
4. "Android licensing" or "Android licenses" refers to any distribution or other license granting device manufacturers, as defined below, the right to ship mobile devices with Android installed.
5. "And" or "or" is construed either conjunctively or disjunctively, whichever provides the broadest meaning possible for the particular context.
6. "Any" or "each" encompasses "all."
7. "Barnes & Noble" and "respondent(s)" means and refers to Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC, individually and collectively, including without

limitation all of their corporate locations, and all predecessors, predecessors in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with Barnes & Noble, Inc. and/or barnesandnoble.com LLC and others acting on behalf of Barnes & Noble, Inc. and/or barnesandnoble.com LLC.

8. "Commission" means United States International Trade Commission.

9. "Communication" means and refers to any transmission of information, in any form, via any medium, including without limitation documents incorporating summarizing or describing the contents of the transmission, meetings and discussions, telephone conversations, electronic communications, telegraphic communications, or any document containing a recording, transcription, summary, or description or identifying the time, place, subject matter, medium of transmission and/or participants in the transmission.

10. "Device manufacturers" means any importer, manufacturer, provider, reseller or other entity that markets mobile devices, as defined below, in the United States.

11. "Document" or "documents" are used in the broadest possible sense, and include:  
(a) any and all printed, written, taped, recorded, graphic, computerized printout, electronically stored, or other tangible matter of materials, from whatever source, however produced or reproduced or capable of being produced, whether in draft form or otherwise, whether sent or received or neither, including all writings, confirmations, wire transfers, correspondence, electronic mail communications, letters, papers, notebooks, statements, representations, affidavits, opinions, transcripts, summaries and recordings of telephone and other conversations or of interviews or of conferences, video and audio tapes and records of any kind, telegrams, telexes, facsimiles, cables, contracts, proposals, agreements, minutes, notations, typed or

handwritten notes, memoranda, analyses, projections, studies, evaluations, work papers, books, records, reports, diaries, journals, questionnaires, financial records, books of account, checks, check stubs, lists, logs, ledgers, spreadsheets, statistical records, brochures, sales and marketing materials, pamphlets, advertisements, circulars, press releases, calendars, graphs, charts, organization charts, sketches, diagrams, maps, drawings, photographs, microfilms, telephone logs, messages, films, summaries, digests, financial statements, computer-readable data compilations, and all other information or data records or compilations from which information or data records or compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form, including all underlying, supporting, or preparatory material and all information on computer drives or diskettes; (b) any and all originals, drafts, and copies that differ in any material respect from the original, including, without limitation, all marginal comments that appear on such documents; and (c) all attachments, enclosures, or documents affixed to or referenced in such documents. If copies of document are not identical by reason of any handwritten notations, initials, identification marks, or any other modification, each non-identical copy is a separate document within the meaning of this definition. The term "document" or "documents" includes, without limitation, documents kept by individuals in their desks or files, on their computers, at home or elsewhere.

12. "Google" means and refers to Google Inc., including without limitation all of its corporate locations, and all predecessors, predecessors in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with Google Inc. and others acting on behalf of Google Inc.

13. "Including" or "includes" means "including but not limited to" or "including without limitation."

14. "Microsoft" means Microsoft Corporation and all of its subsidiaries, current or former officers, directors, employees, agents, attorneys, and other representatives of any of them and all other persons acting or purporting to act on behalf of them.

15. "Microsoft/Nokia agreement" means the strategic agreement between Microsoft and Nokia Corp., announced on February 11, 2011. *See* <http://www.microsoft.com/presspass/press/2011/feb11/02-11partnership.mspx>.

16. "Microsoft Patent(s)" means the patents-at-issue in the Present Investigation, namely the '372 Patent, the '522 Patent, the '780 Patent, the '551 Patent, and the '233 Patent (as defined below).

17. "Mobile device(s)" means any mobile telephone, smartphone, tablet computer or e-reader. "Mobile device(s)" does not include laptop, notebook, netbook, or desktop personal computers.

18. "Mobile operating system(s)" means any computer operating system designed to run primarily or exclusively on mobile devices, as defined above.

19. "Other Identified Patents" means U.S. Patent Nos. 5,579,517 ("the '517 patent"), 5,652,913 ("the '913 patent"), 5,758,352 ("the '352 patent"), 6,791,536 ("the '536 patent"), and 6,897,853 ("the '853 patent").

20. "Person" means any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other legal entity. The acts of a Person shall include the acts of directors, officers, owners, members, employees, agents, attorneys, and other representatives acting on the Person's behalf.

21. "Present Investigation" means *Certain Handheld. Electronic Computing Devices, Related Software, and Components Thereof*, Inv. No. 337-TA-769.

22. "Relating to" and "referring to" mean in whole or in part affecting, concerning, constituting, containing, embodying, reflecting, involving, describing, analyzing, identifying, mentioning, stating, referring directly or indirectly to, dealing with, or in any way pertaining to that subject, and shall be interpreted so as to encompass the scope of discovery set forth in Federal Rule of Civil Procedure 26(b)(1). For example, documents that "relate to" or "refer to" any given subject means all documents that constitute, deal with, refer to, describe, evidence, contain, discuss, embody, reflect, identify, state, or concern in any way, the subject or are in anyway pertinent to that given subject including, but not limited to, documents concerning the preparation of other documents.

23. The "'372 Patent" means U.S. Patent No. 5,778,372, entitled "Remote Retrieval and Display Management of Electronic Document with Incorporated Images" and issued on July 7, 1998.

24. The "'522 Patent" means U.S. Patent No. 5,889,522, entitled "System Provide Child Window Controls" and issued on March 30, 1999.

25. The "'780 Patent" means U.S. Patent No. 6,339,780, entitled "Loading Status in Hypermedia Browser Having a Limited Available Display Area" and issued on January 15, 2002.

26. The "'551 Patent" means U.S. Patent No. 6,891,551, entitled "Selection Handles in Editing Electronic Documents" and issued on May 10, 2005.

27. The "233 Patent" means U.S. Patent No. 6,957,233, entitled "Method and Apparatus for Capturing and Rendering Annotations for Non-modifiable Electronic Content" and issued on October 18, 2005.

28. "Thing" shall be construed under the broadest possible construction under the Federal Rules of Civil Procedure.

29. The plural includes the singular and the singular includes the plural, whichever makes the request more inclusive.

The singular and masculine form of a noun or pronoun is construed to include the plural, the feminine, or neuter form of the noun or pronoun, whichever is appropriate or whichever provides the broadest meaning possible for the particular context.

#### **DEPOSITION TOPICS**

1. Communications with Barnes & Noble regarding the Microsoft Patents or Other Identified Patents.

2. Communications with Barnes & Noble regarding license negotiations between Barnes & Noble and Microsoft.

3. Agreements between Google and Barnes & Noble relating to Android, and communications with Barnes & Noble regarding Android distribution or licenses.

4. Business evaluations, assessments, strategy discussions, or analyses of the actual or potential impact, on Android distribution, of patents held by Microsoft, Apple Inc., Oracle Corp., or any other entity.

5. Business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

6. Business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

7. Business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

8. Business discussions with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

9. Google's contemplation of, or business discussions with Barnes & Noble regarding, indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

10. Google's contemplation of, or business discussions with device manufacturers regarding, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

11. Google's contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

12. Google's contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

13. Business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

14. Business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business Machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

15. Business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

16. Business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

17. Historical and projected unit shipments, for the United States and worldwide, for Android or other mobile operating systems.

MSFT602111-2.doc

**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

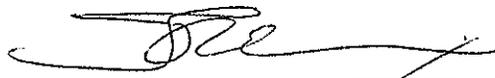
information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the Administrative Law Judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping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

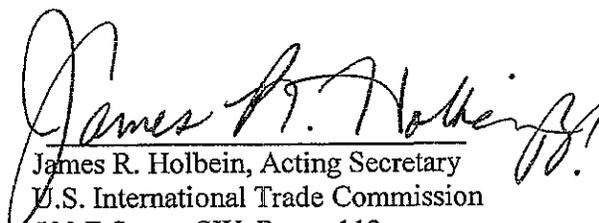
Firm or affiliation \_\_\_\_\_

**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  
 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. ( ) Via Hand Delivery  
2 Zihyou Street, Tucheng City ( ) Via Overnight Mail  
Taipei County; 236 (X) Via First Class Mail  
Taiwan ( ) Other: \_\_\_\_\_

Foxconn Electronics, Inc. ( ) Via Hand Delivery  
2 Zihyou Street, Tucheng City ( ) Via Overnight Mail  
Taipei County; 236 (X) Via First Class Mail  
Taiwan ( ) Other: \_\_\_\_\_

Foxconn Precision Component (Shenzhen) Co.Ltd ( ) Via Hand Delivery  
No. 2, East Ring Road ( ) Via Overnight Mail  
No. 10 Industrial Zone (X) Via First Class Mail  
Yousong, Longhua, Shenzhen ( ) Other: \_\_\_\_\_  
Guandong 518109  
China

Foxconn International Holdings, Ltd ( ) Via Hand Delivery  
8F Peninsula Tower ( ) Via Overnight Mail  
538 Castle Peak Road (X) Via First Class Mail  
Cheung Sha Wan Kowloon ( ) Other: \_\_\_\_\_  
New Territories  
Hong Kong

Inventee Corporation ( ) Via Hand Delivery  
Inventee Building ( ) Via Overnight Mail  
No. 66 Hou-Kang Street (X) Via First Class Mail  
Shin-Lin District ( ) Other: \_\_\_\_\_  
Taipei County, 111  
Taiwan

**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: \_\_\_\_\_

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. 9: GRANTING AMENDED JOINT MOTION FOR ENTRY OF AN  
ADDENDUM TO THE PROTECTIVE ORDER RELATING TO  
PRODUCTION OF HIGHLY CONFIDENTIAL SOURCE CODE**

(August 3, 2011)

On July 27, 2011, complainant Microsoft Corporation (“Microsoft”); respondents Barnes & Noble, Inc. and barnesandnoble.com LLC (collectively, “Barnes & Noble”); respondents Foxconn Electronics, Inc., Foxconn Precision Component (Shen Zhen) Co., Ltd., Foxconn International Holdings Ltd. (collectively, “Foxconn”); respondent Hon Hai Precision Industry Co., Ltd. (“Hon Hai”); and respondent Inventec Corporation (“Inventec”), collectively referred to as “the Private Parties,” filed a joint motion for the entry of an addendum to the Protective Order in this investigation to more particularly address the production of highly confidential source code during the discovery process. (Motion Docket No. 769-011.) The motion states that the Commission Investigative Staff does not oppose the motion.

The Private Parties seek to amend the Protective Order to provide appropriate additional protections for and to facilitate the orderly and efficient production of only relevant source code.

Good cause being shown and there being no opposition, Motion No. 769-011 is

hereby GRANTED. The Protective Order (Order No. 1) is hereby amended to include the provisions set forth in Attachment A.

**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

1. Documents, things or information that comprise a Party's confidential, proprietary and/or trade secret source code or object code may be designated by the Party producing them as "CONFIDENTIAL SOURCE CODE." Documents, things or information that include or are accompanied by confidential, proprietary and/or trade secret source code or object code may be designated CONFIDENTIAL SOURCE CODE only if such confidential, proprietary and/or trade secret source code or object code cannot reasonably be segregated from the document or thing.

(a) Subject to the following notice provisions and each producing Party's written objections to discovery requests (*e.g.*, as to relevance, over-breadth, undue burden, etc.) and/or requests to review CONFIDENTIAL SOURCE CODE, each producing Party shall make the responsive, relevant portions of its CONFIDENTIAL SOURCE CODE available for inspection during discovery and through the conclusion of the hearing in this action. Any single reviewing session (conducted during one business day or during consecutive business days of review) shall be conducted during regular business hours (9:00 A.M. to 5:00 P.M. local time) on five (5) calendar days written (including e-mail) notice, or during such other hours as may be mutually and reasonably agreed upon on reasonable notice to the producing Party.

(b) A list of names of persons who will view the relevant portions of the CONFIDENTIAL SOURCE CODE (in the private room referenced in subparagraph (d), below) will be provided to the producing Party in conjunction with the written notice requesting inspection of the CONFIDENTIAL SOURCE CODE. Each receiving Party shall be limited to at total of three (3) individuals that it chooses from its outside counsel of record in this investigation as its designees for viewing the CONFIDENTIAL SOURCE CODE in the private

inspection of the CONFIDENTIAL SOURCE CODE. Each receiving Party shall be limited to at total of three (3) individuals that it chooses from its outside counsel of record in this investigation as its designees for viewing the CONFIDENTIAL SOURCE CODE in the private room referenced in subparagraph (d), below, along with its approved (*see* subparagraphs (i) and (j), below) technical experts (up to a total of five (5) such experts, *see* below). For the sake of clarity, while those three outside counsel designees for each Party are the only outside counsel for a receiving Party permitted to enter the private room and review the CONFIDENTIAL SOURCE CODE on the SOURCE CODE COMPUTER, the Parties recognize and agree that after the CONFIDENTIAL SOURCE CODE is produced to the receiving Party all outside counsel for that receiving Party, who are authorized under the Protective Order in this Investigation to do so, are permitted to review the produced CONFIDENTIAL SOURCE CODE (pursuant to the terms of that Protective Order and this Addendum). The receiving Party shall maintain a daily log of the names of persons who enter the CONFIDENTIAL SOURCE CODE viewing room (see sub-paragraph (d) below) to view the CONFIDENTIAL SOURCE CODE and note on the log when these persons enter and depart. The producing Party shall be entitled to have a person observe all entrances and exits from the source code viewing room, to keep a log of same at its sole discretion, and to receive a copy of the log kept by the receiving Party, but shall not otherwise be entitled to observe the receiving Party's inspection.

(c) All CONFIDENTIAL SOURCE CODE produced pursuant to this Order will be made available by the producing Party at the following locations:

by Barnes & Noble, at the offices of Kenyon & Kenyon LLP, One Broadway, New York, NY 10004 or another location in New York, NY provided by Barnes & Noble;

by Microsoft, at the offices of Woodcock Washburn LLP, Cira Center,

Philadelphia, PA 19104; and

by other parties and third parties, at such location(s) as may be mutually agreed to by the producing party or third party and the requesting Party, or as otherwise ordered by the Administrative Law Judge.

(d) All CONFIDENTIAL SOURCE CODE portions will be made available in a private room, on a secured computer without Internet access or network access to other computers, as necessary and appropriate to prevent and protect against any unauthorized copying, transmission, removal, or other transfer of any of that source code outside or away from the computer on which that source code is provided for inspection (the "Source Code Computer"). No other computers or electronic devices of any sort shall be allowed in the private room at any time during the inspection. The producing Party will install such reasonable tools or programs as are necessary only to search the code produced on the Source Code Computer, or as reasonably requested by the receiving Party only to search that code (and the receiving Party may provide such tools or programs and request their installation on the SOURCE CODE COMPUTER if the producing Party does not have them or some reasonably similar searching program). The producing Party may object to the receiving Party's request to install such tools or programs if such installation and/or programs are unreasonable or unnecessary, in light of tools or programs to search the code already installed on the Source Code Computer. Further, the producing Party shall not be obligated to install tools or programs capable of compiling and running source code. To the extent the receiving Party provides the producing Party with tools or programs to install for use during a reviewing session, and no objection is made to same by the producing Party, any such tools or programs must be provided no later than five (5) business days in advance of the first reviewing session for which such installation is desired. Thereafter,

such tools or programs shall remain on the Source Code Computer throughout the discovery period, absent reasonable objection or agreement to the contrary.

(e) Up to three individuals from the receiving Party's outside counsel of record in this Investigation (*see* subparagraph (b), above) and its approved (*see* subparagraphs (i) and (j), below) technical experts, who have first complied with all paragraphs of the Protective Order in this Investigation, including paragraphs 3 and 4 thereof, shall be entitled to enter the private room, view the Source Code Computer and take hand-written notes relating to the CONFIDENTIAL SOURCE CODE, but none of them is permitted to copy that source code itself into the notes. All such hand-written notes must be clearly labeled as "CONFIDENTIAL SOURCE CODE, SUBJECT TO PROTECTIVE ORDER" and shall be subject to the provisions of sub-paragraph (j) below. No copies of all or any portion of the CONFIDENTIAL SOURCE CODE may leave the room in which it is inspected. Furthermore, no other written or electronic record of the CONFIDENTIAL SOURCE CODE is permitted except as otherwise provided herein.

(f) During inspection of the CONFIDENTIAL SOURCE CODE portions, the receiving Party's designated outside counsel in the private room may compile a list of such source code files (or portions thereof) to be produced. The receiving Party will only identify such files (or portions thereof) as are both relevant to the issues at hand in this Investigation and reasonably necessary to facilitate the receiving Party's preparation of the case, including (1) when reasonably necessary to prepare any filing with the Administrative Law Judge or Commission or to serve any pleadings or other papers on any other Party, or (2) to prepare other necessary case materials such as testifying expert reports, consulting expert written analyses, and related drafts and correspondences. For the duration of this case, in no event may the receiving

Party identify more than those files (or portions thereof) that are both relevant to the issues at hand in this Investigation and reasonably necessary to facilitate the receiving Party's preparation of the case, without prior written approval by the producing Party. Upon identification of such relevant and reasonably necessary information by the receiving Party, the producing Party shall print, append production numbers to, and label such files with the file's complete file path and the designation "CONFIDENTIAL SOURCE CODE." If the producing Party objects that identified files (or portions thereof) are not relevant and/or reasonably necessary, the producing Party shall make such objection known to the receiving Party within five (5) business days of the identification of any files by the receiving Party. If, after meeting and conferring, the producing Party and the receiving Party cannot resolve the objection, the receiving Party shall be entitled to seek a judicial resolution (through a written motion, with the producing Party having the opportunity to file a written opposition paper) of whether or not the identified CONFIDENTIAL SOURCE CODE in question is relevant to any issue at hand in this Investigation and reasonably necessary to any case preparation activity. In the absence of any objection, or upon resolution of any such dispute by the Administrative Law Judge, the producing Party shall provide one printed copy of the identified files (or portions thereof) to the receiving Party within five (5) business days of the identification of such files by the receiving Party or, if applicable, resolution of a dispute by the Administrative Law Judge. The printed pages shall constitute part of the CONFIDENTIAL SOURCE CODE produced by the producing Party in this action.

(g) Unless otherwise agreed in advance by the receiving and producing Parties in writing, following each reviewing session (conducted during one business day or during consecutive business days of review), the up to three (3) designated individuals from the

receiving Party's outside counsel of record in this Investigation and/or its approved technical experts in that room shall remove all notes, documents and any other materials from the room that may contain work product and/or attorney-client privileged information. The producing Party shall not be responsible for any items left in the room following each inspection session.

(h) The receiving Party will not copy, remove, or otherwise transfer any CONFIDENTIAL SOURCE CODE from the Source Code Computer in any manner. The receiving Party will not transmit any CONFIDENTIAL SOURCE CODE in any way from the producing Party's facilities or the offices of its outside counsel of record.

(i) Documents designated CONFIDENTIAL SOURCE CODE may only be viewed by or disclosed to the receiving Party's outside counsel of record in this Investigation (and their necessary, full-time support personnel employed internally at that counsel's firm) or the receiving Party's technical experts approved by the producing Party. The term "technical expert" as used herein shall mean the same as defined in paragraph 3 of the Protective Order in this Investigation, except that it is limited to the expert alone and shall not include any support staff for such an expert. Moreover, under no circumstances can CONFIDENTIAL SOURCE CODE of a producing Party be disclosed to in-house counsel or any in-house employee of a receiving Party.

(j) A receiving Party desiring to disclose information to a technical expert, who is first qualified under the Protective Order in this Investigation to review Confidential Business Information, shall give prior written notice to the producing Party or non-Party, who shall have ten (10) business days after such notice is given to object in writing to that proposed disclosure. A receiving Party desiring to make such a disclosure of CONFIDENTIAL SOURCE CODE information to a technical expert must provide the following information to the

producing Party with respect to each technical expert: (i) name, address, curriculum vitae, current employer, and employment (including consulting) history for the past five (5) years; (ii) a listing of cases in which the witness has testified as an expert at trial or by deposition within the preceding five (5) years; (iii) and a signed declaration from the identified technical expert, indicating that he or she has read this Order and agrees to comply with all of its provisions along with the existing provisions of the Protective Order in this Investigation, relative to any CONFIDENTIAL SOURCE CODE reviewed or received by the expert in this Investigation. No CONFIDENTIAL SOURCE CODE information shall be disclosed to such expert(s) until the later of the expiration of the foregoing notice period or until final resolution of the producing Party's objections to that disclosure, if any are made. If a producing Party objects to the disclosure of its CONFIDENTIAL SOURCE CODE to a given expert, such objections shall be resolved in the same manner as outlined in paragraph 11 of the Protective Order in this Investigation (regarding objections to disclosure of Confidential Business Information to a designated technical expert). In no event may a receiving Party designate more than five (5) technical experts to have access to a producing Party's CONFIDENTIAL SOURCE CODE.

(k) The outside counsel and technical experts (who have been approved to access source code under sub-paragraphs (i) and (j) above) for a receiving Party shall maintain and store any paper copies of the CONFIDENTIAL SOURCE CODE or notes related to such source code (as referenced in sub-paragraphs (e) and (f), above) at their offices in a manner that prevents duplication of or unauthorized access to that source code or notes, including, without limitation, storing that source code or notes in a locked room or cabinet at all times when those materials are not in use.

(l) The receiving Party's outside counsel of record in this Investigation may

make no more than five additional paper copies of any portions of the CONFIDENTIAL SOURCE CODE files identified pursuant to sub-paragraph (f), above, not including copies attached to court filings, and shall maintain a log of all copies of that source code (received from a producing Party) that are provided by the receiving Party to any qualified person. The log shall include the names of the recipients and reviewers of copies and locations where the copies are stored. Any paper copies of such source code shall be clearly designated CONFIDENTIAL SOURCE CODE and shall be stored or viewed only at (1) the offices of outside counsel of record in this Investigation for the receiving Party, (2) the offices of technical experts who have been approved to access source code under sub-paragraphs (i) and (j), above, (3) the site where any deposition is taken, (4) the Administrative Law Judge, or (5) any intermediate location necessary to transport the information to a hearing, trial, or deposition. Any such paper copies shall be maintained at all times in a locked and secure location. The producing Party shall not unreasonably deny a receiving Party's request to make (and log) additional copies, providing that the request is for good cause and for use that otherwise complies with this Order and the Protective Order in this Investigation. The producing Party shall be entitled to a copy of the log upon request, and at the conclusion of the Investigation.

(m) The receiving Party may include excerpts of a producing Party's CONFIDENTIAL SOURCE CODE in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or any drafts of these documents ("Source Code Documents"). The receiving Party shall only include such excerpts as are reasonably necessary for the purposes for which such part of that source code is used.

(n) To the extent portions of CONFIDENTIAL SOURCE CODE are quoted in a Source Code Document, either (1) the entire document will be stamped CONFIDENTIAL

SOURCE CODE or (2) those pages containing quoted source code will be separately bound, and stamped as CONFIDENTIAL SOURCE CODE. All Source Code Documents shall also be marked with the legend "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice, and shall be treated as confidential business information pursuant to Commission Rule 210.5(b) (19 C.F.R. § 210.5(b)).

(o) All paper copies of CONFIDENTIAL SOURCE CODE shall be securely destroyed if they are no longer necessary in the litigation (*e.g.*, extra copies at the conclusion of a deposition). Copies of CONFIDENTIAL SOURCE CODE that are marked as deposition exhibits shall not be provided to the court reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.

(p) The receiving Party may not create electronic images, or any other images, of the CONFIDENTIAL SOURCE CODE from the paper copy for use on a computer (*e.g.*, may not scan the source code to a PDF, or photograph the code). The receiving Party may create an electronic copy or image of selected portions of the CONFIDENTIAL SOURCE CODE only when reasonably necessary to accomplish any filing with the Commission or to serve any pleadings or other papers on the producing Party (including expert reports). Images or copies of CONFIDENTIAL SOURCE CODE shall not be included in correspondence between the Parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent permitted herein.

(q) Upon the final termination of this Investigation, return and/or destruction of CONFIDENTIAL SOURCE CODE by a receiving Party to a producing Party shall be governed by paragraph 14 of the Protective Order in this Investigation. In addition, at the same time, a receiving Party shall provide the producing party with written confirmation of the

destruction of all notes taken in accordance with paragraphs (e) and (f) of this Order.

**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 9** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on **August 3, 2011**.



James R. Holbein, Secretary to Commission  
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.  
**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  
( ) 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 Mail  
() Via First Class Mail  
( ) 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.  
**HAYNESBOONE**  
1614 L Street, NW, Suite 800  
Washington, DC 20036

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

**On Behalf of Respondent INVENTEC CORPORATION:**

Bijal V. Vakil, Esq.  
**WHITE & CASE LLP**  
3000 El Camino Real  
5 Palo Alto Square, 9<sup>th</sup> Floor  
Palo Alto, CA 94306

( ) 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 TWO**

**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: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **APPLICATION FOR ISSUANCE OF SUBPOENA *DUCES TECUM* AND SUBPOENA *AD TESTIFICANDUM* TO AMAZON.COM, INC.** was served to the parties, in the manner indicated below, this 4th day of October 2011:

GOOGLE INC.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

VIA OVERNIGHT DELIVERY

The Honorable Theodore R. Essex  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W., Room 317N  
Washington, DC 20436

VIA HAND DELIVERY

Jeffrey Hsu  
Office of Unfair Import Investigations  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W., Room 404-J  
Washington, DC 20436

VIA HAND DELIVERY  
 VIA ELECTRONIC MAIL

**Counsel for Respondents Barnes & Noble, Inc.  
and barnesandnoble.com LLC and  
Inventec Corporation**

Marcia H. Sundeen  
Jeffrey S. Gerchick  
Aimee N. Souci  
KENYON & KENYON LLP  
1500 K Street, N.W.  
Washington, DC 20005

VIA HAND DELIVERY  
 VIA ELECTRONIC MAIL  
 VIA FIRST CLASS MAIL  
 VIA OVERNIGHT DELIVERY

**Counsel for Respondents Foxconn  
Electronics, Inc., Foxconn Precision  
Component (Shen Zhen) Co. Ltd., Foxconn  
International Holdings Ltd. and Hon Hai  
Precision Industry Co., Ltd**

---

Edward M. Lebow  
HAYNES AND BOONE, LLP  
1615 L Street, N.W.  
Suite 800  
Washington, DC 20036

- VIA HAND DELIVERY
- VIA ELECTRONIC MAIL
- VIA AIR MAIL
- VIA OVERNIGHT DELIVERY

  
\_\_\_\_\_  
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.  
1200 Seventeenth St., N.W., Fifth Floor  
Washington, DC 20036

MSFT100011-2 ALJ.doc

# Exhibit B

CN

# Google's Page says Android attacks have no impact



<http://www.cnet.com/profile/iamjaygreene/>

by **Jay Greene** <http://www.cnet.com/profile/iamjaygreene/> | October 13, 2011 2:28 PM PDT

Google Chief Executive Officer Larry Page told analysts today he's seen "no signs" that rivals' tactics challenging **Android** <http://www.cnet.com/android-atlas/> over patent infringement have been effective.

During the company's quarterly conference call, Page was asked about the onslaught of legal challenges to Google's mobile operating system. Microsoft and **Oracle have targeted Android** [http://www.cnet.com/8301-1001\\_3-20102859-92/google-oracle-eye-settlement-talks-over-android/](http://www.cnet.com/8301-1001_3-20102859-92/google-oracle-eye-settlement-talks-over-android/), accusing either the company or its partners of using their intellectual property without licensing it. Earlier today, **Quanta signed a licensing deal** [http://www.cnet.com/8301-10805\\_3-20119908-75/microsoft-inks-android-chrome-deal-with-quanta/](http://www.cnet.com/8301-10805_3-20119908-75/microsoft-inks-android-chrome-deal-with-quanta/) with Microsoft to use Android as well as Google's Chrome operating system.



Google CEO Larry Page

(Credit: Google)

Page said that the attacks on Android aren't slowing down the growth of the operating system.

"We're seeing no signs that that's effective," Page told an analyst in response to a question. "If anything, our position is getting stronger."

He also took a swipe at Microsoft, noting that the company was pushing around its partners to ink some of these deals. Microsoft has cut an Android patent agreement with **longtime partner HTC** [[http://www.cnet.com/8301-13860\\_3-20003602-56.html](http://www.cnet.com/8301-13860_3-20003602-56.html)], among others.

"They've continued resorting to legal measures to hassle their partners. It's odd," Page said.



<http://www.cnet.com/profile/iamjaygreene/>

**Jay Greene** [<http://www.cnet.com/profile/iamjaygreene/>]

Jay Greene, a CNET senior writer, works from Seattle and covers Microsoft, Google and Yahoo. He's the author of the book, *Design Is How It Works: How the Smartest Companies Turn Products into Icons* (Penguin/Portfolio). He started writing about Microsoft and technology in 1998, first as a reporter for The Seattle Times and later as BusinessWeek's Seattle bureau chief.

# Exhibit C

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Tuesday, October 11, 2011 9:15 PM  
**To:** 'kevinsmith@quinnemanuel.com'  
**Subject:** In the Matter of Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof, 337-TA-769

Mr. Smith,

Rowan Morris forwarded your email requesting a two-week extension for Google to comply with the subpoenas *duces tecum* and *ad testificandum* served by Microsoft on October 5, in connection with the above-referenced matter.

The October 17 deadline provided Google with ample time to produce the documents sought by the subpoena *duces tecum*, and is in keeping with the usual pace and rules of ITC practice. Fact discovery closes on November 14; sufficient time must be allotted to identify and cure any deficiencies that may exist in Google's document production and to review the produced documents in advance of the deposition of Google's designated witness. Therefore, Microsoft cannot agree to a two-week extension of the deadline for document production, nor any extension of the ten-day period for motions to quash or limit the subpoenas, and will oppose any motion seeking such an extension.

However, Microsoft will not oppose a one-week extension of the production deadline, if that extension will better enable the production of documents. Microsoft's agreement is conditioned on Google agreeing that it will produce any responsive documents and any applicable privilege log on October 24, and will not move to quash or limit either subpoena.

If this proposal is acceptable to your client, please let me know at your earliest convenience.



**RICHARD A. RINKEMA**

*Senior Associate*

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

COLUMBIA CENTER  
1152 15TH STREET, N.W.  
WASHINGTON, D.C. 20005-1706

tel 202.339.8565

fax 202.339.8500

[rrinkema@orrick.com](mailto:rrinkema@orrick.com)

[www.orrick.com](http://www.orrick.com)

# Exhibit D

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Friday, October 14, 2011 6:18 PM  
**To:** 'kevinsmith@quinnemanuel.com'  
**Subject:** In the Matter of Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof, 337-TA-769

Kevin,

Microsoft agrees not to oppose an extension of the subpoena deadlines (for production or for motions to quash) to Wednesday, October 19.

I would be happy to discuss the scope of the document requests with you. Can we talk Monday morning your time?

Best,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

COLUMBIA CENTER

1152 15TH STREET, N.W.

WASHINGTON, D.C. 20005-1706

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[rrinkema@orrick.com](mailto:rrinkema@orrick.com)

[www.orrick.com](http://www.orrick.com)

# Exhibit E

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Tuesday, October 18, 2011 9:03 PM  
**To:** 'Kevin Smith'; Alex Lasher  
**Subject:** In the Matter of Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof, 337-TA-769

Kevin and Alex,

Based on your explanation of Google's objections to the subpoena in the above-referenced matter, Microsoft responds as follows (for ease of reference, I am copying the requests for production below, with our responses inline in *red italics* to each):

- **REQUEST FOR PRODUCTION NO. 1**

All documents reflecting or relating to communications with Barnes & Noble regarding the Microsoft Patents or Other Identified Patents.

*You asked whether Microsoft could obtain the requested communications from Barnes & Noble rather than from Google. While Barnes & Noble may provide some of the requested communications in its production, different companies may have different document retention policies, and documents may have been lost, deleted or destroyed in one instance but not another. Further, the request also seeks documents related to, not just reflecting, such communications. Therefore, Microsoft cannot agree to exclude from this Request communications that may also appear in Barnes & Noble's production.*

- **REQUEST FOR PRODUCTION NO. 2**

All documents reflecting or relating to communications with Barnes & Noble regarding license negotiations between Barnes & Noble and Microsoft.

*For the same reasons stated with respect to Request for Production No. 1, Microsoft cannot agree to exclude communications with Barnes & Noble from this Request.*

- **REQUEST FOR PRODUCTION NO. 3**

All agreements between Google and Barnes & Noble relating to Android, and all documents reflecting or relating to communications with Barnes & Noble regarding Android distribution or licenses.

*For the same reasons stated with respect to Request for Production No. 1, Microsoft cannot agree to exclude communications or agreements with Barnes & Noble from this Request.*

- **REQUEST FOR PRODUCTION NO. 4**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the actual or potential impact, on Android distribution, of patents held by Microsoft, Apple Inc., Oracle Corp., or any other entity.

*You objected to the scope of this Request to the extent that it seeks evidence relating to patents held by non-Microsoft entities. Microsoft can agree that Google need not produce documents that relate solely to patents held by entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 5**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

*Microsoft agrees that Google need not produce documents that relate solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft.*

*In addition, you raised concerns about whether the scope of this request would lead to evidence that is protected by the work product doctrine, and asked whether Microsoft could agree to waive the requirement for a privilege*

*log. As you are aware, Barnes & Noble claims that Microsoft's patent infringement lawsuit is part of an anti-competitive strategy aimed at Android. For this reason, Google's business analysis of Microsoft's Android-related lawsuits is relevant to whether those lawsuits have any allegedly anti-competitive effect in any relevant market. Microsoft believes that all of these Requests are appropriately limited with respect to privilege issues, and cannot agree to waive a privilege log. However, we will consider any specific suggestions as to appropriate limitations on this Request that will help Google identify non-privileged, responsive documents and limit the burden.*

- **REQUEST FOR PRODUCTION NO. 6**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

*As stated above with respect to Request for Production No. 5, Microsoft cannot agree to waive a privilege log, but is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden.*

- **REQUEST FOR PRODUCTION NO. 7**

All documents reflecting or relating to business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

*As described above, Microsoft cannot agree to exclude communications with Barnes & Noble, and cannot agree to waive a privilege log. However, Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 8**

All documents reflecting or relating to business discussions with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

*As described above, Microsoft cannot agree to waive the need for a privilege log, including as to documents that may be protected under a joint defense or other applicable agreement. However, Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 9**

All documents reflecting or relating to Google's contemplation of, or business discussions with Barnes & Noble concerning, indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

*This Request seeks evidence relevant to Barnes & Noble's claim that Microsoft's conduct has an anti-competitive effect on Android, for which Google is the project leader. Discussions about indemnification are relevant to what business actions Google and/or Barnes & Noble have taken or considered in response to patent infringement claims, and what effect such claims may have on Android in any relevant market.*

*For the reasons stated above, Microsoft cannot agree to exclude communications with Barnes & Noble, or to waive a privilege log with respect to any Request. However, Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to patent infringement claims by entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 10**

All documents reflecting or relating to Google's contemplation of, or business discussions with device manufacturers concerning, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

*This Request seeks evidence relevant for the same reasons described above with respect to Request for Production No. 9. For the reasons stated above, Microsoft cannot agree to waive a privilege log with respect to any Request. Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to patent infringement claims by entities other than Microsoft. However, Microsoft cannot agree to limit this Request to documents related to deployment of Android by specific device manufacturers.*

- **REQUEST FOR PRODUCTION NO. 11**

All documents reflecting or relating to Google’s contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

*For the reasons stated above, Microsoft cannot agree to exclude communications with Barnes & Noble, or to waive a privilege log with respect to any Request. Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to patents owned by, patent infringement claims or assertions by, or negotiations over patent licenses with entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 12**

All documents reflecting or relating to Google’s contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

*For the reasons stated above, Microsoft cannot agree to exclude communications with Barnes & Noble, or to waive a privilege log with respect to any Request. Microsoft is willing to consider specific suggestions that may help expedite the production of non-privileged, responsive documents and limit the burden. In addition, Google need not produce documents that relate solely to patents owned by, patent infringement claims or assertions by, or negotiations over patent licenses with entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 13**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

*You asked for more detail as to the relevance of the documents sought by this Request. In paragraph 53 of its response to Microsoft’s complaint, Barnes & Noble claims that as a result of the Microsoft/Nokia agreement, Microsoft’s market share will rise to over 30 percent worldwide, and that Microsoft and Nokia “apparently agreed on a strategy of coordinating their offensive patent assertion strategies going forward—further demonstrating the dominant position of Microsoft.” In paragraph 9 of that response, Barnes & Noble asserts that the Microsoft/Nokia agreement “is per se illegal under the antitrust laws, threatens competition for mobile device operating systems and is further evidence of Microsoft’s efforts to dominate and control Android and other open source operating systems.” Barnes & Noble has served Microsoft with very broad document requests relating to the Microsoft/Nokia agreement. As leader of the Android project, Google’s business evaluations, assessments, strategy discussions, or analyses are relevant to Barnes & Noble’s claims about the Microsoft/Nokia agreement.*

- **REQUEST FOR PRODUCTION NO. 14**

All documents reflecting or relating to business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business Machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

*You asked for more detail as to the relevance of the documents sought by this Request. In paragraph 9 of its response to Microsoft’s complaint, Barnes & Noble claims that Microsoft and Nokia have agreed to use their “combined intellectual property portfolio . . . both defensively and offensively.” Barnes & Noble also claims that horizontal agreements between holders of significant patent portfolios are “per se illegal” and “threaten competition.” In addition, Barnes & Noble asserts in paragraph 49 that Microsoft’s patent infringement claims against Barnes & Noble and other companies “have a significant, wide-felt, and highly detrimental anticompetitive effect and restrain competition in the market for mobile operating systems by suppressing the use and development of open source mobile operating systems, including the Android Operating System, and the development of applications and devices employing the same.” Barnes & Noble further asserts in paragraph 50 that these activities are “part of Microsoft’s campaign to force open source developers and others to pay expensive license fees (reducing their ability to compete with Microsoft) or to leave the market altogether.*

*Any Google business plan or strategy designed to respond to such claims is relevant to Barnes & Noble’s broad claims described above, among others. By way of just one example, any agreement by Google to acquire a patent portfolio for defensive use is relevant to (a) whether the defensive assertion of patent portfolios threatens competition; (b) whether Microsoft’s patent infringement claims have any alleged anticompetitive effect on*

*Android in a relevant market; and (c) whether patent licensing will reduce the ability of open source developers and others to compete with Microsoft or force them to leave any relevant market.*

*In order to limit the scope of this Request, however, Microsoft agrees that Google need not produce documents relating solely to patent infringement claims by entities other than Microsoft.*

- **REQUEST FOR PRODUCTION NO. 15**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

*You asked for more detail as to the relevance of the documents sought by this Request. In paragraph 56 of Barnes & Noble's response to Microsoft's complaint, Barnes & Noble asserts that "Microsoft is attempting to minimize, or eliminate competition, for devices, including tablets, eReaders, and other mobile devices, that employ the Android Operating System and other open source operating systems, that pose a threat to Microsoft's monopoly in the PC operating system market." Google's business evaluations, assessments, strategy discussions, or analyses of Android's capability as a PC operating system are relevant to this assertion by Barnes & Noble, and to determining the relevant market for analyzing Barnes & Noble's patent misuse defense.*

- **REQUEST FOR PRODUCTION NO. 16**

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

*In paragraph 54 of its response to Microsoft's complaint, Barnes & Noble asserts that Microsoft "has market power with respect to mobile operating systems." As leader of the Android project, Google's business evaluations, assessments, strategy discussions, or analyses of competition from any other mobile operating system are relevant both to defining any relevant market and to Barnes & Noble's claim that Microsoft possesses market power in the purported market for mobile operating systems. Therefore, Microsoft cannot agree to limit this Request to only Microsoft products.*

- **REQUEST FOR PRODUCTION NO. 17**

All documents reflecting or relating to historical and projected unit shipments, for the United States and worldwide, for Android or other mobile operating systems.

*Microsoft can agree to limit this Request by seeking only documents sufficient to identify historical and projected unit shipments of Android. However, Microsoft cannot agree to limit the Request to only United States shipments—as indicated above, Barnes & Noble has repeatedly made claims on the basis of both a U.S. and a worldwide market.*

In agreeing to the above limitations, Microsoft does not waive any rights to seek further discovery if necessary, or to move to compel if warranted. If you have any questions about the above, please let me know as soon as possible.

Best regards,

Dick



**RICHARD A. RINKEMA**  
Senior Associate

**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
COLUMBIA CENTER  
1152 15TH STREET, N.W.  
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*tel* 202.339.8565  
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[rrinkema@orrick.com](mailto:rrinkema@orrick.com)  
[www.orrick.com](http://www.orrick.com)

# Exhibit F

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

NON-PARTY GOOGLE INC.'S RESPONSES AND OBJECTIONS TO MICROSOFT  
CORP.'S SUBPOENAS *DUCES TECUM* AND *AD TESTIFICANDUM*

Pursuant to 19 C.F.R. §§ 210.27, 210.30, and 210.32 of the United States International Trade Commission's Rules of Practice and Procedure, non-party Google Inc. (“Google”) hereby responds to the Subpoenas *Duces Tecum* and *Ad Testificandum* served by Microsoft Corp. on or about October 5, 2011 (“Subpoenas”) with responses and objections set forth below.

GENERAL OBJECTIONS

1. Google objects to the date and location demanded for production of documents and deposition upon oral examination in the Subpoenas. Subject to its general and specific objections, Google will produce documents as soon as practicable.
2. Google objects to the provided deposition date, which does not provide sufficient time for Google to identify and adequately prepare a witness or witnesses to provide testimony regarding properly discoverable facts responsive to the “Deposition Topics.” Subject to its general and specific objections, Google will appear for deposition at a date and time agreed to by counsel for Google and Microsoft.
3. Google objects to the noticed location of the deposition. Subject to its general and

specific objections, Google will appear for deposition at a location or locations convenient for its designated witnesses, or as agreed by counsel for Google and Microsoft.

4. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" as unduly burdensome and harassing to the extent they purport to impose burdens, requirements or obligations that exceed or differ from those permitted by Commission Rules of Practice and Procedure 210.15 and 210.32(d) (19 C.F.R. §§ 210.5 and 210.32(d)).

5. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent they call for legal conclusions.

6. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privileges and protections. Such information will not be provided. Inadvertent disclosure of such information shall not constitute a waiver of any privilege, right, or ground for objecting to providing such information and shall not waive Google's right to object to the use of such information.

7. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent they call for the disclosure of proprietary or other confidential testimony. Google will only provide such disclosure subject to and in reliance upon the protective order entered in this action.

8. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent they call for the disclosure of proprietary or confidential source code. Google will only provide such disclosure subject to and in reliance

upon an appropriate protective order governing confidential source code.

9. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, incomprehensible, harassing, improperly duplicative or cumulative of other discovery, particularly insofar as they contain the terms "any," "every," "all," and "without limitation."

10. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent they call for testimony that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence or are not limited to a relevant time period.

11. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that such Definitions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific Deposition Topics or Requests for Production of Documents and Things where such enlargement, expansion, or alteration renders said Deposition Topics or Requests for Production of Documents and Things vague, ambiguous, overbroad, unduly burdensome, harassing, incomprehensible, or calling for testimony that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they seek information not within Google's possession, custody or control. An objection on this ground does not constitute a representation or admission that such information does, in fact, exist.

13. Google objects to Microsoft's definition of the term "Google" and to any "Deposition

Topics” and “Requests for Production of Documents and Things” incorporating those terms, as overbroad, unduly burdensome, vague and ambiguous, and as calling for testimony that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

14. Google objects to Microsoft’s definition of the term “Document” and “Documents” to the extent that they purport to impose burdens or requirements upon Google that exceed or differ from the requirements of Commission Rules of Practice and Procedure 210.15 and 210.32(d), particularly insofar as the definition purports to require the production of documents that are not in Google’s possession, custody or control.

15. Google objects to Microsoft’s definition of the terms “Android” and "Android platform" to the extent that it is vague and unduly broad and purports to impose burdens or requirements upon Google that exceed or differ from the requirements of Commission Rules of Practice and Procedure 210.15 and 210.32(d), particularly insofar as the definition purports to require the production of documents and testimony about products or functionality irrelevant to this Investigation.

16. Google objects to Microsoft’s definition of the term “Android licensing” to the extent that it is vague and unduly broad and purports to impose burdens or requirements upon Google that exceed or differ from the requirements of Commission Rules of Practice and Procedure 210.15 and 210.32(d), particularly insofar as the definition purports to require the production of documents and testimony about products or functionality irrelevant to this Investigation.

17. Google objects to Microsoft’s definition of the term “person” and to any “Deposition Topics” and “Requests for Production of Documents and Things” incorporating this term, as overbroad, unduly burdensome, vague and ambiguous, and as calling for testimony that is neither

relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Google objects to Microsoft's definition of the terms "Mobile device" and "Mobile operating system" and to any "Deposition Topics" and "Requests for Production of Documents and Things" incorporating these terms, as overbroad, unduly burdensome, vague and ambiguous, and as calling for testimony that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

19. Google objects to Microsoft's definition of the term "communication" and to any "Deposition Topics" and "Requests for Production of Documents and Things" incorporating these terms, to the extent that they are overbroad, burdensome, and purports to impose burdens or requirements upon Google that exceed or differ from the requirements of Commission Rules of Practice and Procedure 210.15 and 210.32(d), particularly insofar as the definition purports to require the production of documents that are not in Google's possession, custody or control and testimony about information that is not Google's possession, custody or control.

20. Google objects to Microsoft's use of the terms "business evaluations," "assessments," "strategy discussions," and "analyses" as overly broad, vague, and unduly burdensome.

21. Google objects to Microsoft's definition of "Device manufacturer" as unduly vague, broad, and burdensome, especially to the extent it includes "resellers" or "other entity that markets mobile devices."

22. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they are unduly burdensome (both in scope and number), overbroad, oppressive, call for production of information and testimony that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence or call for the production of information that is not in Google's possession custody or control.

23. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" as unduly burdensome, overbroad and oppressive to the extent that they call for the production of documents and testimony that would require Google to perform a technical analysis of the Android software.

24. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" as unduly burdensome, overbroad, oppressive and calling for the production of information and testimony that is not in Google's possession, custody or control to the extent that they call for testimony concerning modifications to source code made by Barnes & Noble or any other respondent.

25. Google objects to Microsoft's "Definitions," "Deposition Topics" and "Requests for Production of Documents and Things" as unduly burdensome, overbroad, oppressive and calling for the production of information and testimony that is not in Google's possession, custody or control to the extent that they call for testimony concerning the operation of the accused products.

26. Any objection by Google does not constitute a representation or admission that such information does in fact exist or is known to Google.

27. Google's production of documents and the testimony of any Google witnesses are based upon such information as is reasonably available to Google at the time of production or testimony. Further independent discovery, independent investigation, legal research and analysis by Google or its counsel may supply additional facts, information or documents, or add meaning to known facts, information or documents. Google's productions and the testimony of any Google witnesses are given without prejudice to Google's right to provide evidence of or testimony regarding any subsequently discovered or compiled facts, information or documents, or to supplement or modify such Google productions or testimony.

28. Google objects to Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they seek information confidential or proprietary to third parties, which Google is contractually required to maintain confidential. To the extent that the "Deposition Topics" and "Requests for Production of Documents and Things" call for such information, Google will produce this information, to the extent relevant and responsive, only in accordance with its obligations under these confidentiality agreements or if ordered by the Court.

29. Google objects to Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they are improperly duplicative or cumulative of other discovery.

30. Google objects to Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that the information being sought is discoverable by other less burdensome and more efficient means.

31. Google objects to Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they seek premature expert testimony.

32. Google objects to Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" to the extent that they seek discovery more appropriately obtained from a party to the investigation.

33. Google objects that Microsoft has provided no basis with which to assess the relevance of the discovery sought to the disputed issues in the investigation, other than a conclusory "Application" filed with the Commission.

34. Google objects that Microsoft's "Deposition Topics" and "Requests for Production of Documents and Things" are broader than and not reasonably tailored to the disputed issues described in the "Application" provided to the Commission.

35. Google objects that its subjective beliefs of the subjective beliefs of its officers and employees are not relevant to the disputed issues described in the "Application" provided to the Commission.

36. Google objects to each Request for Production to the extent it seeks the production of "all" documents and/or things on the grounds that providing a response to such requests would be unduly burdensome. Representative documents will be provided as appropriate.

37. Google objects to each Request and Topic to the extent it seeks Google's Highly Confidential information.

38. Google objects to Microsoft's instructions regarding a privilege log as unduly burdensome.

#### RESPONSES AND OBJECTIONS TO REQUESTS FOR DOCUMENTS

Google incorporates by reference the General Objections and Objections to the Definitions set forth above into each of the Specific Objections and Responses set forth below. Google may repeat an objection for emphasis or some other reason. The failure to repeat any General Objection does not waive any General Objection to the Request. Moreover, Google expressly reserves and does not waive its right to amend its Objections and Responses.

#### REQUEST FOR PRODUCTION NO. 1

All documents reflecting or relating to communications with Barnes & Noble regarding the Microsoft Patents or Other Identified Patents.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 1

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to request documents related to patents not asserted in this investigation or documents that merely "reflect" or "relate" to communications with Barnes & Noble regarding Microsoft's Patents.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

## REQUEST FOR PRODUCTION NO. 2

All documents reflecting or relating to communications with Barnes & Noble regarding license negotiations between Barnes & Noble and Microsoft.

## RESPONSE TO REQUEST FOR DOCUMENT NO. 2

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that merely "reflect" or "relate" to communications with Barnes & Noble regarding license negotiations with Microsoft.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

### REQUEST FOR PRODUCTION NO. 3

All agreements between Google and Barnes & Noble relating to Android, and all documents reflecting or relating to communications with Barnes & Noble regarding Android distribution or licenses.

### RESPONSE TO REQUEST FOR DOCUMENT NO. 3

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that merely "reflect" or "relate" to communications with Barnes & Noble regarding Android distribution or licenses.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

#### REQUEST FOR PRODUCTION NO. 4

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analysis of the actual or potential impact, on Android distribution, of patents held by Microsoft, Apple Inc., Oracle Corp., or any other entity.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 4

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it purports to call for documents that merely "reflect" or "relate" to business evaluations, assessments, strategy discussions, or analysis of the actual or potential impact, on Android distribution, of patents held by Microsoft.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client privilege or work product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information

responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to patents held by entities other than Microsoft" and any response will be limited accordingly.

#### REQUEST FOR PRODUCTION NO. 5

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 5

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it purports to encompass patents other than those currently asserted by Microsoft.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that merely "reflect" or "relate" to business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to actual, potential, or threatened infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

#### REQUEST FOR PRODUCTION NO. 6

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 6

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it encompasses patents that are not currently asserted by Microsoft.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it relates to patents not asserted by Microsoft or purports to call for documents that merely "reflect" or "relate" to business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request to the extent that it seeks information regarding unasserted patents.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Google objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work product doctrine.

#### REQUEST FOR PRODUCTION NO. 7

All documents reflecting or relating to business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 7

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that merely "reflect" or "relate" to business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

#### REQUEST FOR PRODUCTION NO. 8

All documents reflecting or relating to business discussions with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 8

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that relate to unasserted patents or documents that merely "reflect" or "relate" to business discussions with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common interest privilege or work product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

#### REQUEST FOR PRODUCTION NO. 9

All documents reflecting or relating to Google's contemplation of, or business discussions with Barnes & Noble concerning, indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 9

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for documents that related to unasserted patents or documents that merely "reflect" or "relate" to Google's contemplation of, or business discussions with Barnes & Noble concerning,

indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

#### REQUEST FOR PRODUCTION NO. 10

All documents reflecting or relating to Google's contemplation of, or business discussion with device manufacturers concerning, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 10

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents that merely "reflect" or "relate" to Google's contemplation of, or business discussion with device manufacturers concerning, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

## REQUEST FOR PRODUCTION NO. 11

All documents reflecting or relating to Google's contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

## RESPONSE TO REQUEST FOR DOCUMENT NO. 11

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to relate to patents other than those asserted by Microsoft in this litigation or purports to seek documents that merely "reflect" or "relate" to Google's contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects to this Request as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because these documents are equally available from Barnes & Noble, Microsoft's Request is unduly burdensome.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to patents owned by, patent infringement claims asserted by, or negotiations over patent licenses with entities other than Microsoft" and any response will be limited accordingly.

Subject to and without waiving its specific and general objections, and to the extent understood, Google will conduct a reasonable search for responsive, non-privileged documents, and produce such documents, if any.

#### REQUEST FOR PRODUCTION NO. 12

All documents reflecting or relating to Google's contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 12

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to relate to patents

other than those asserted by Microsoft in this litigation or purports to seek documents that merely "reflect" or "relate" to Google's contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Request does not seek "documents that relate solely to patents owned by, patent infringement claims or assertions by, or negotiations over patent licenses with entities other than Microsoft" and any response will be limited accordingly.

#### REQUEST FOR PRODUCTION NO. 13

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

### RESPONSE TO REQUEST FOR DOCUMENT NO. 13

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents that merely "reflect" or "relate" to business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

### REQUEST FOR PRODUCTION NO. 14

All documents reflecting or relating to business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business Machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

### RESPONSE TO REQUEST FOR DOCUMENT NO. 14

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents

that merely "reflect" or "relate" to business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business Machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Microsoft has represented to Google that this Request does not seek "documents relating solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

#### REQUEST FOR PRODUCTION NO. 15

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 15

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents that merely "reflect" or "relate" to business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

Google further objects to this Request to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Request is not relevant, is unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of computer manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular operating system.

#### REQUEST FOR PRODUCTION NO. 16

All documents reflecting or relating to business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 16

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it purports to encompass mobile operating systems other than those provided by Microsoft.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents that merely "reflect" or "relate to" business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

#### REQUEST FOR PRODUCTION NO. 17

All documents reflecting or relating to historical and projected unit shipments, for the United States and worldwide, for Android or other operating systems.

#### RESPONSE TO REQUEST FOR DOCUMENT NO. 17

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Request to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to seek documents that merely "reflect" or "relate to" historical and projected unit shipments, for the United States and worldwide, for Android or other operating systems.

Google objects that the phrase "unit shipments" is unduly vague.

Google further objects that this Request is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Request is in the possession of device manufacturers, the entities who are most

likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Google further objects to this Request as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Microsoft has represented to Google that this Request merely seeks "documents sufficient to identify historical and projected unit shipments of Android" and any response will be limited accordingly.

### RESPONSES AND OBJECTIONS TO DEPOSITION TOPICS

Google incorporates by reference the General Objections and Objections to the Definitions set forth above into each of the Specific Objections and Responses set forth below. Google may repeat an objection for emphasis or some other reason. The failure to repeat any General Objection does not waive any General Objection to the Topic. Moreover Google expressly reserves and does not waive its right to amend its Objections and Responses. Google specifically objects to the Complainants' Deposition Topics as follows:

#### TOPIC NO. 1

Communications with Barnes & Noble regarding the Microsoft Patents or Other Identified Patents.

#### RESPONSE TO TOPIC NO. 1

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to request information related to patents not asserted in this investigation.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is equally available from Barnes & Noble, Microsoft's Topic is unduly burdensome.

Google further objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

## TOPIC NO. 2

Communications with Barnes & Noble regarding license negotiations between Barnes & Noble and Microsoft.

## RESPONSE TO TOPIC NO. 2

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is equally available from Barnes & Noble, Microsoft's Topic is unduly burdensome.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

### TOPIC NO. 3

Agreements between Google and Barnes & Noble relating to Android, and communications with Barnes & Noble regarding Android distribution or licenses.

### RESPONSE TO TOPIC NO. 3

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is equally available from Barnes & Noble, Microsoft's Topic is unduly burdensome.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

#### TOPIC NO. 4

Business evaluations, assessments, strategy discussions, or analyses of the actual or potential impact, on Android distribution, of patents held by Microsoft, Apple Inc., Oracle Corp., or any other entity.

#### RESPONSE TO TOPIC NO. 4

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for information protected by the attorney-client privilege or work product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to patents held by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 5

Business evaluations, assessments, strategy discussions, or analyses of actual, potential, or threatened patent infringement lawsuits related to Android.

#### RESPONSE TO TOPIC NO. 5

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it purports to encompass patents other than those currently asserted by Microsoft.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to actual, potential, or threatened infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 6

Business evaluations, assessments, strategy discussions, or analyses of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.

#### RESPONSE TO TOPIC NO. 6

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it encompasses patents that are not currently asserted by Microsoft.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic to the extent that it seeks information regarding unasserted patents.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Google objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work product doctrine.

#### TOPIC NO. 7

Business discussions with Barnes & Noble regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

#### RESPONSE TO TOPIC NO. 7

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is available from Barnes & Noble, Microsoft's Topic is unduly burdensome.

Google further objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 8

Business discussion with device manufacturers regarding the actual or potential impact, on Android distribution, of actual, potential, or threatened patent infringement lawsuits.

#### RESPONSE TO TOPIC NO. 8

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to call for information related to unasserted patents.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for materials protected by the attorney-client or common interest privilege or work product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to actual, potential, or threatened patent infringement lawsuits by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 9

Google's contemplation of, or business discussions with Barnes & Noble regarding, indemnification for patent infringement claims related to deployment of Android by Barnes & Noble.

## RESPONSE TO TOPIC NO. 9

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects to this Topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is available from Barnes & Noble, Microsoft's Topic is unduly burdensome.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

## TOPIC NO. 10

Google's contemplation of, or business discussions with device manufacturers, regarding, indemnification for patent infringement claims related to deployment of Android by device manufacturers.

## RESPONSE TO TOPIC NO. 10

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 11

Google's contemplation of, or business discussions with Barnes & Noble concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations.

## RESPONSE TO TOPIC NO. 11

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence,

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to relate to patents other than those asserted by Microsoft in this litigation.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects to this Topic as unduly burdensome. Communications with Barnes & Noble are available from Barnes & Noble, a party to the investigation. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (requested information should first be sought from a party). Because this information is equally available from Barnes & Noble, Microsoft's topic is unduly burdensome.

Microsoft has represented to Google that this Topic does not seek information "that relate solely to patents owned by, patent infringement claims asserted by, or negotiations over patent licenses with entities other than Microsoft" and any response will be limited accordingly.

## TOPIC NO. 12

Google's contemplation of, or business discussions with device manufacturers concerning, designing, redesigning, altering, withholding, or removing Android features to avoid infringing patents, respond to patent infringement claims or assertions, or respond to negotiations over patent licenses.

## RESPONSE TO TOPIC NO. 12

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative, especially to the extent it purports to relate to patents other than those asserted by Microsoft in this litigation.

Google further objects to this topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic does not seek information "that relate[s] solely to patents owned by, patent infringement claims or assertions by, or negotiations over patent licenses with entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 13

Business evaluations, assessments, strategy discussions, or analyses of the Microsoft/Nokia agreement.

#### RESPONSE TO TOPIC NO. 13

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

#### TOPIC NO. 14

Business plans or strategies to respond to Android patent infringement claims by asserting patents acquired or proposed to be acquired from International Business machines Corp., Motorola Mobility Holdings, Inc., or any other entity, or by asserting antitrust claims or defenses.

#### RESPONSE TO TOPIC NO. 14

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

Microsoft has represented to Google that this Topic does not seek information "relating solely to patent infringement claims by entities other than Microsoft" and any response will be limited accordingly.

#### TOPIC NO. 15

Business evaluations, assessments, strategy discussions, or analyses of Android's capability (current or projected) as a personal computer operating system.

#### RESPONSE TO TOPIC NO. 15

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects to this Topic to the extent that it seeks information regarding components or applications that are not accused by Microsoft in any of its infringement claims or contentions.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of computer manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular operating system.

#### TOPIC NO. 16

Business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems.

#### RESPONSE TO TOPIC NO. 16

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence, especially to the extent it purports to encompass mobile operating systems other than those provided by Microsoft.

Google further objects to this Request to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Google further objects to this Topic as calling for information protected by the attorney-client or common-interest privilege or work-product doctrine.

#### TOPIC NO. 17

Historical and projected unit shipments, for the United States and worldwide, for Android or other mobile operating systems.

#### RESPONSE TO TOPIC NO. 17

Google incorporates by reference its General Objections as though fully set forth herein.

Google further objects to this Topic to the extent that it seeks information that is neither relevant to any claims or defenses in this investigation nor reasonably calculated to lead to the discovery of admissible evidence.

Google further objects to this Topic to the extent that it is overly broad, unduly burdensome, oppressive, and duplicative.

Google objects that the phrase "unit shipments" is unduly vague.

Google further objects to this Topic as calling for materials protected by the attorney-client or common-interest privilege or work-product doctrine.

Google further objects that this Topic is not relevant, is unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in that any information responsive to this Topic is in the possession of device manufacturers, the entities who are most likely to possess information relevant to the impact of Microsoft's actions on their decision to use a particular mobile operating system.

Microsoft has represented to Google that this Topic merely seeks information "sufficient to identify historical and projected unit shipments of Android" and any response will be limited accordingly.

Respectfully submitted.

Dated: October 19, 2011

*/s/ David A. Perlson*

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David A. Perlson  
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Fax: (415) 975-6700  
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QUINN EMANUEL URQUHART & SULLIVAN,  
LLP

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2011, the foregoing was served upon the following parties as indicated:

<p>Jeffrey Hsu Office of Unfair Import Investigation U.S. International Trade Commission 500 E. Street, S.W. Washington, D.C. 20436 Email: jeffrey.hsu@usitc.gov</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail</p>
<p><i>Counsel for Microsoft Corporation</i></p> <p>V. James Adduci Adduci, Mastriani &amp; Schaumberg LLP 1200 Seventeenth St., NW 5<sup>th</sup> Floor Washington, D.C. 20036 Email: MSFT-2@adduci.com; MSFT-L14External@woodcock.com; MSFT_BN@orrick.com</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail</p>
<p><i>Counsel for Respondent Hon Hai Precision Industry Co., Ltd., Foxconn Electronics, Inc., Foxconn International Holdings Ltd., and Foxconn Precision Component (Shenzhen) Co., Ltd.</i></p> <p>Edward M. Lebow Haynes and Boone LLP 1615 L Street, NW Suite 800 Washington, D.C. 20036 Email: HonHai769@haynesboone.com</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail</p>
<p><i>Counsel for Respondents Barnes &amp; Noble, Inc., BarnesAndNoble.com LLC, and Inventec Corp.</i></p> <p>Marcia H. Sundeen Jeffrey S. Gerchick Aimee N. Souci Kenyon &amp; Kenyon LLP One Broadway New York, NY 10004 Email: MSundeen@Kenyon.com; jgerchick@kenyon.com; asoucie@kenyon.com</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail</p>

/s/ Jon Tap

\_\_\_\_\_  
Jon Tap

# Exhibit G

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Friday, October 21, 2011 8:37 PM  
**To:** 'Kevin Smith'; Alex Lasher  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin and Alex,

We have reviewed Google's responses and objections served on October 19, 2011. Thank you for agreeing to search for and produce responsive, non-privileged documents relating to Requests 1, 2, 3, 7, 9, and 11.

We note, however, that Google has not agreed to conduct searches for the remaining Requests. With respect to Requests 4, 5, 8, 10, 12, 14, and 17, Google has stated that any response will be limited according to Microsoft's representations in the meet-and-confer process, but has not indicated that it will conduct any search for responsive, non-privileged documents and produce such documents. With respect to Requests 6, 13, 15, and 16, Google also has not indicated that it will conduct any search for responsive, non-privileged documents and produce such documents.

Subject to its objections, does Google intend to search for and produce non-privileged documents responsive to all of the Requests? If not, please provide an explanation as soon as possible.

Lastly, in a telephonic hearing today, Administrative Law Judge Essex extended the deadline for fact discovery relating to Barnes & Noble's patent misuse defense. As a result, Microsoft can agree to a 15-day extension of time (to November 8) for Google to produce documents. I trust that this will help alleviate the concerns over burden articulated in Google's objections, and enable us to quickly resolve these outstanding issues.

Best,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

COLUMBIA CENTER

1152 15TH STREET, N.W.

WASHINGTON, D.C. 20005-1706

*tel* 202.339.8565

*fax* 202.339.8500

[rrinkema@orrick.com](mailto:rrinkema@orrick.com)

[www.orrick.com](http://www.orrick.com)

# Exhibit H

## Rinkema, Richard A.

---

**From:** Kevin Smith [kevinsmith@quinnemanuel.com]  
**Sent:** Tuesday, October 25, 2011 12:46 PM  
**To:** Rinkema, Richard A.  
**Cc:** Alex Lasher; Perlson, David  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Dick,

Thank you for the information regarding the telephonic hearing and the extension of time to produce documents. Google has begun collecting documents responsive to Requests 1, 2, 3, 7, 9, and 11. As stated during our meet and confer and in Google's Objections, however, many of the remaining requests call for documents containing Google's "strategy" and "assessments" related to various legal issues. The vast majority, if not all, of those documents would therefore be protected work-product and/or attorney-client privileged communications. Further, all of the remaining Requests exceed any relevance to the investigation that Microsoft has so far articulated. Google therefore does not intend to search for or produce documents responsive to requests 4, 5, 8, 10, 12, 14 or 17 unless Microsoft further narrows the scope of those requests and more clearly articulates their relevance to the investigation.

**Kevin Smith**  
*Associate,*  
Quinn Emanuel Urquhart & Sullivan, LLP

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San Francisco, CA 94111  
415-875-6383 Direct  
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**From:** Rinkema, Richard A. [mailto:rrinkema@orrick.com]  
**Sent:** Friday, October 21, 2011 5:37 PM  
**To:** Kevin Smith; Alex Lasher  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin and Alex,

We have reviewed Google's responses and objections served on October 19, 2011. Thank you for agreeing to search for and produce responsive, non-privileged documents relating to Requests 1, 2, 3, 7, 9, and 11.

We note, however, that Google has not agreed to conduct searches for the remaining Requests. With respect to Requests 4, 5, 8, 10, 12, 14, and 17, Google has stated that any response will be limited according to Microsoft's representations in the meet-and-confer process, but has not indicated that it will conduct any search for responsive, non-privileged documents and produce such documents. With respect to Requests 6, 13, 15, and 16, Google also has not indicated that it will conduct any search for responsive, non-privileged documents and produce such documents.

Subject to its objections, does Google intend to search for and produce non-privileged documents responsive to all of the Requests? If not, please provide an explanation as soon as possible.

Lastly, in a telephonic hearing today, Administrative Law Judge Essex extended the deadline for fact discovery relating to Barnes & Noble's patent misuse defense. As a result, Microsoft can agree to a 15-day extension of time (to November 8) for Google to produce documents. I trust that this will help alleviate the concerns over burden articulated in Google's objections, and enable us to quickly resolve these outstanding issues.

Best,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

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=====  
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=====  
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# Exhibit I

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Wednesday, October 26, 2011 1:40 PM  
**To:** 'Kevin Smith'  
**Cc:** Alex Lasher; Perlson, David  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your email today confirming that Google is searching for documents responsive to Requests 1, 2, 3, 7, 9, and 11.

With respect to Requests 4, 5, 8, 10, 12, 14, and 17, I note in response:

- Microsoft already has agreed to exclude from these Requests any documents relating solely to entities other than Microsoft.
- We have repeatedly confirmed, during our meet-and-confer and in my October 18, 2011, e-mail as well as in the text of the Requests themselves, that the Requests apply to *business* evaluations, assessments, strategy discussions, or analyses (Requests 4, 5), *business* discussions with device manufacturers (Requests 8, 10, 12), and *business* plans or strategies (Request 14). Google's insistence that the "vast majority, if not all" of these requested business documents will be protected is baseless.
- Despite the specific language of the Requests and Microsoft's repeated confirmation that it seeks business documents, Microsoft nevertheless offered, both in our meet-and-confer and in my October 18 email, to consider any reasonable and specific limitations Google may propose that will expedite production and lessen the purported burden. Google has not responded with any proposed limitations at all.
- Request 17 seeks, again pursuant to a limitation Microsoft agreed to in order to lessen Google's production burden, documents sufficient to identify historical and projected unit shipments of Android. There is no possible interpretation of this Request that could implicate the work product doctrine or attorney-client privilege. Google clearly would be in possession of any such projections relating to the overall Android market. The Request clearly is relevant to the impact, if any, of Microsoft's alleged conduct on Android shipments.
- The relevance of all of the Requests is self-evident, but for purposes, hopefully, of narrowing this dispute:
  - Microsoft provided additional, detailed descriptions of the relevance of Requests 10 and 14 at Google's request.
  - All of the Requests relate to Google's knowledge of the impact, if any, on Android of conduct that Barnes & Noble alleges harms Android.
  - Google is an entity that would be in a position to understand the impact of any alleged conduct on the overall market for Android devices.

Furthermore, you have not addressed whether Google intends to search for documents responsive to Requests 6, 13, 15 or 16. Microsoft has provided detailed explanations of the relevance of these Requests. As with other Requests, Microsoft has sought business documents in these four Requests, and any privilege implications should be minimal (and in the case of Requests 13, 15, and 16, practically non-existent). With respect to Request 6, Microsoft has again indicated that it will consider reasonable and specific suggested limitations from Google, and Google has declined to offer any.

Microsoft's explanations, limitations, and offers apply equally to Google's objections to the deposition topics in the subpoena *ad testificandum*.

Microsoft agreed to provide Google with a one-week extension of the production deadline, then a two-day extension of the response deadline, and then, in conjunction with the extension of fact discovery, offered a further two-week extension of the production deadline. In order to lessen the burden on Google and in the spirit of cooperation, Microsoft has agreed to significant and unnecessary limitations on the documents Google must produce, and offered to continue working with Google. Google has not responded in kind. Please let me know by the close of business today, Pacific time, whether Google will reconsider its refusal to search for and produce documents responsive to Requests 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, and 17. Otherwise, Microsoft will consider us to be at an impasse and seek to enforce the subpoena immediately.

Regards,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

COLUMBIA CENTER

1152 15TH STREET, N.W.

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[rrinkema@orrick.com](mailto:rrinkema@orrick.com)

[www.orrick.com](http://www.orrick.com)

# Exhibit J

## Rinkema, Richard A.

---

**From:** Kevin Smith [kevinsmith@quinnemanuel.com]  
**Sent:** Thursday, October 27, 2011 7:25 PM  
**To:** Rinkema, Richard A.  
**Cc:** Perlson, David; Alex Lasher; Perlson, David  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Dick,

I would like to tentatively offer a compromise proposal for your consideration. I am still awaiting final approval from my client regarding this proposal, but I thought it would be worthwhile to allow you the chance to discuss it with Microsoft and provide feedback.

Under this proposal, Google would agree to collect documents from four custodians who have primary responsibility for relations with handset manufacturers generally and Barnes & Noble specifically. Those custodians include Lan Roche, Android Sales Engineer; Chris Barton, Head of Android Business Development – Americas; John Lagerling, Director, Android Global Partnerships; and Patrick Brady, Director of Android Partner Engineering. Google would search for and collect documents from these custodians that are responsive to Requests 1-3 and 7-12.

In addition, in response to Request 17, Google can provide non-confidential documents identifying past and projected U.S. Android shipments. To the extent Microsoft would like confidential information on third-party Android shipments, Google will have to evaluate whether it is obligated to provide notice and an opportunity to move for a protective order to third-party device manufacturers.

I am available to schedule a time to discuss.

**Kevin Smith**

*Associate,*  
Quinn Emanuel Urquhart & Sullivan, LLP

50 California Street, 22nd Floor  
San Francisco, CA 94111  
415-875-6383 Direct  
415.875.6600 Main Office Number  
415.875.6700 FAX  
kevinsmith@quinnemanuel.com  
[www.quinnemanuel.com](http://www.quinnemanuel.com)

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---

**From:** Kevin Smith  
**Sent:** Wednesday, October 26, 2011 4:05 PM  
**To:** 'Rinkema, Richard A.'; 'Rinkema, Richard A.'  
**Cc:** Alex Lasher; David Perlson; Alex Lasher; David Perlson  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Rick,

Thanks for the response. I am conferring with Google and expect to be able to respond to your email tomorrow.

**Kevin Smith**

*Associate,*  
Quinn Emanuel Urquhart & Sullivan, LLP

50 California Street, 22nd Floor  
San Francisco, CA 94111  
415-875-6383 Direct  
415.875.6600 Main Office Number  
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---

**From:** Rinkema, Richard A. [mailto:[rrinkema@orrick.com](mailto:rrinkema@orrick.com)]  
**Sent:** Wednesday, October 26, 2011 10:40 AM  
**To:** Kevin Smith  
**Cc:** Alex Lasher; David Perlson  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your email today confirming that Google is searching for documents responsive to Requests 1, 2, 3, 7, 9, and 11.

With respect to Requests 4, 5, 8, 10, 12, 14, and 17, I note in response:

- Microsoft already has agreed to exclude from these Requests any documents relating solely to entities other than Microsoft.
- We have repeatedly confirmed, during our meet-and-confer and in my October 18, 2011, e-mail as well as in the text of the Requests themselves, that the Requests apply to *business* evaluations, assessments, strategy discussions, or analyses (Requests 4, 5), *business* discussions with device manufacturers (Requests 8, 10, 12), and *business* plans or strategies (Request 14). Google's insistence that the "vast majority, if not all" of these requested business documents will be protected is baseless.
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- Request 17 seeks, again pursuant to a limitation Microsoft agreed to in order to lessen Google's production burden, documents sufficient to identify historical and projected unit shipments of Android. There is no possible interpretation of this Request that could implicate the work product doctrine or attorney-client privilege. Google clearly would be in possession of any such projections relating to the overall Android market. The Request clearly is relevant to the impact, if any, of Microsoft's alleged conduct on Android shipments.
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  - Microsoft provided additional, detailed descriptions of the relevance of Requests 10 and 14 at Google's request.
  - All of the Requests relate to Google's knowledge of the impact, if any, on Android of conduct that Barnes & Noble alleges harms Android.
  - Google is an entity that would be in a position to understand the impact of any alleged conduct on the overall market for Android devices.

Furthermore, you have not addressed whether Google intends to search for documents responsive to Requests 6, 13, 15 or 16. Microsoft has provided detailed explanations of the relevance of these Requests. As with other Requests, Microsoft has sought business documents in these four Requests, and any privilege implications should be minimal (and in the case of Requests 13, 15, and 16, practically non-existent). With

respect to Request 6, Microsoft has again indicated that it will consider reasonable and specific suggested limitations from Google, and Google has declined to offer any.

Microsoft's explanations, limitations, and offers apply equally to Google's objections to the deposition topics in the subpoena *ad testificandum*.

Microsoft agreed to provide Google with a one-week extension of the production deadline, then a two-day extension of the response deadline, and then, in conjunction with the extension of fact discovery, offered a further two-week extension of the production deadline. In order to lessen the burden on Google and in the spirit of cooperation, Microsoft has agreed to significant and unnecessary limitations on the documents Google must produce, and offered to continue working with Google. Google has not responded in kind. Please let me know by the close of business today, Pacific time, whether Google will reconsider its refusal to search for and produce documents responsive to Requests 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, and 17. Otherwise, Microsoft will consider us to be at an impasse and seek to enforce the subpoena immediately.

Regards,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

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=====

THANK YOU IN ADVANCE FOR YOUR COOPERATION.

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# Exhibit K

## Rinkema, Richard A.

---

**From:** Rinkema, Richard A.  
**Sent:** Monday, October 31, 2011 8:30 PM  
**To:** Kevin Smith  
**Cc:** Perlson, David; Alex Lasher  
**Subject:** Re: 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your suggestion regarding appropriate custodians for Requests 1-3 and 7-12, and agreement regarding Request 17. Microsoft agrees that Google may limit its initial search to Lan Roche, Chris Barton, John Lagerling, and Patrick Brady as to those Requests, on the understanding that if the documents suggest more appropriate custodians, such custodians may be added at a later time.

That narrows our differences to Requests 4-6 and 13-16. In hopes of quickly resolving these differences, Microsoft can offer the following additional compromises (with changes to existing text in underlined red):

- Requests 5 and 6 may be further limited to “business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of actual, potential, or threatened patent infringement lawsuits by Microsoft related to Android” and “business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.”
- Request 16 also may be further limited to “business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems from Microsoft.”
- Requests 4-6, 15, and 16 cover higher-level business discussions within Google of the impact on Android of the alleged conduct. Therefore, it is important that senior Google executives be included as custodians, including Messrs. Page, Brin, Schmidt, and Andy Rubin. These executives have commented publicly on the alleged impact of Microsoft patents, patent claims, and litigation on Android, and may possess important evidence relevant to Barnes & Noble’s claims that Microsoft’s alleged conduct has had an anti-competitive effect. In addition, we ask that Google identify an appropriate custodian covering investor relations at Google, as certain statements regarding the impact of alleged Microsoft conduct have occurred in the context of, for example, discussions in quarterly earnings calls. Therefore, with respect to Requests 4-6, 15, and 16, Microsoft can agree to limit Google’s search to these custodians (Page, Brin, Schmidt, Rubin and an investor relations custodian to be named), in addition to the four individuals you named for Requests 1-3 and 7-12. This limitation is subject to the same caveat above that if the documents indicate a more appropriate custodian, such a custodian can be added.
- With the custodial limitations described above, the privilege issue should largely be resolved. Nevertheless, Microsoft agrees that if Google demonstrates that its searches are returning an unreasonable number of privilege hits, it will consider appropriate limits on what must be included in a privilege log.
- Lastly, Microsoft can agree to withdraw Requests 13 and 14.

Please let me know as soon as possible if these compromises are acceptable to your client.



**ORRICK**

**RICHARD A. RINKEMA**

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[www.orrick.com](http://www.orrick.com)

---

**From:** Kevin Smith <[kevinsmith@quinnemanuel.com](mailto:kevinsmith@quinnemanuel.com)>

**Date:** Thu, 27 Oct 2011 16:24:39 -0700

**To:** Richard Rinkema <[rrinkema@orrick.com](mailto:rrinkema@orrick.com)>

**Cc:** David Perlson <[davidperlson@quinnemanuel.com](mailto:davidperlson@quinnemanuel.com)>, Alex Lasher <[AlexLasher@quinnemanuel.com](mailto:AlexLasher@quinnemanuel.com)>, David Perlson <[davidperlson@quinnemanuel.com](mailto:davidperlson@quinnemanuel.com)>

**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Dick,

I would like to tentatively offer a compromise proposal for your consideration. I am still awaiting final approval from my client regarding this proposal, but I thought it would be worthwhile to allow you the chance to discuss it with Microsoft and provide feedback.

Under this proposal, Google would agree to collect documents from four custodians who have primary responsibility for relations with handset manufacturers generally and Barnes & Noble specifically. Those custodians include Lan Roche, Android Sales Engineer; Chris Barton, Head of Android Business Development – Americas; John Lagerling, Director, Android Global Partnerships; and Patrick Brady, Director of Android Partner Engineering. Google would search for and collect documents from these custodians that are responsive to Requests 1-3 and 7-12.

In addition, in response to Request 17, Google can provide non-confidential documents identifying past and projected U.S. Android shipments. To the extent Microsoft would like confidential information on third-party Android shipments, Google will have to evaluate whether it is obligated to provide notice and an opportunity to move for a protective order to third-party device manufacturers.

I am available to schedule a time to discuss.

**Kevin Smith**

*Associate,*

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---

**From:** Kevin Smith  
**Sent:** Wednesday, October 26, 2011 4:05 PM  
**To:** 'Rinkema, Richard A.'; 'Rinkema, Richard A.'  
**Cc:** Alex Lasher; David Perlson; Alex Lasher; David Perlson  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Rick,

Thanks for the response. I am conferring with Google and expect to be able to respond to your email tomorrow.

**Kevin Smith**  
*Associate,*  
Quinn Emanuel Urquhart & Sullivan, LLP

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**From:** Rinkema, Richard A. [<mailto:rrinkema@orrick.com>]  
**Sent:** Wednesday, October 26, 2011 10:40 AM  
**To:** Kevin Smith  
**Cc:** Alex Lasher; David Perlson  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your email today confirming that Google is searching for documents responsive to Requests 1, 2, 3, 7, 9, and 11.

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overall Android market. The Request clearly is relevant to the impact, if any, of Microsoft's alleged conduct on Android shipments.

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  - All of the Requests relate to Google's knowledge of the impact, if any, on Android of conduct that Barnes & Noble alleges harms Android.
  - Google is an entity that would be in a position to understand the impact of any alleged conduct on the overall market for Android devices.

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Regards,

Dick



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

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communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

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=====

# Exhibit L

## Rinkema, Richard A.

---

**From:** Kevin Smith [kevinsmith@quinnemanuel.com]  
**Sent:** Thursday, November 03, 2011 12:06 PM  
**To:** Rinkema, Richard A.  
**Cc:** Perlson, David; Alex Lasher  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Dick,

Thank you for your continued efforts to meet and confer on the scope of Microsoft's subpoena. Although the custodians identified are reasonable and adequate to respond to Microsoft's requests, Google will agree to meet and confer on the issue of collecting documents from additional custodians at a later date, should Microsoft consider it necessary.

I further appreciate your efforts to narrow the scope of Requests 5, 6 and 16 and your decision to withdraw Requests 13 and 14. Nevertheless, Google cannot agree to produce documents that call for its strategies related to the legal issues you have identified in those remaining requests. As stated in our previous correspondence and telephone call, these requests call, for among other things documents describing Google's "strategy" concerning litigation. Although the custodians you have identified are not attorneys, documents in their possession related to Google's litigation strategies would almost invariably be either privileged or work product. Finally, although I appreciate your efforts to clarify, the relevance of these subjects to the defense of patent misuse is not clear to Google. If you have case law or other authority stating that such evidence is relevant to the defense of patent misuse, Google would be willing to reconsider its position.

With respect to the requests that Google has agreed to produce documents in response to, I note that Google does not intend to produce documents produced after the date that Microsoft's subpoena was served. Google also does not intend to produce "autosaved" drafts of emails. I am available to discuss these issues if necessary.

Thanks for your cooperation. I expect to have documents to produce to Microsoft next week.

**Kevin Smith**  
*Associate,*  
Quinn Emanuel Urquhart & Sullivan, LLP

50 California Street, 22nd Floor  
San Francisco, CA 94111  
415-875-6383 Direct  
415.875.6600 Main Office Number  
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---

**From:** Rinkema, Richard A. [mailto:rrinkema@orrick.com]  
**Sent:** Monday, October 31, 2011 5:30 PM  
**To:** Kevin Smith; Kevin Smith  
**Cc:** David Perlson; Alex Lasher; David Perlson; Alex Lasher  
**Subject:** Re: 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your suggestion regarding appropriate custodians for Requests 1-3 and 7-12, and agreement regarding Request 17. Microsoft agrees that Google may limit its initial search to Lan Roche, Chris Barton, John Lagerling, and Patrick Brady as to those Requests, on the understanding that if the documents suggest more appropriate custodians, such custodians may be added at a later time.

That narrows our differences to Requests 4-6 and 13-16. In hopes of quickly resolving these differences, Microsoft can offer the following additional compromises (with changes to existing text in underlined red):

- Requests 5 and 6 may be further limited to “business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of actual, potential, or threatened patent infringement lawsuits by Microsoft related to Android” and “business evaluations, assessments, strategy discussions, or analyses of the impact on Android distribution of public claims by Microsoft or Microsoft executives or employees that Android infringes Microsoft patents.”
- Request 16 also may be further limited to “business evaluations, assessments, strategy discussions, or analyses of competing mobile operating systems from Microsoft.”
- Requests 4-6, 15, and 16 cover higher-level business discussions within Google of the impact on Android of the alleged conduct. Therefore, it is important that senior Google executives be included as custodians, including Messrs. Page, Brin, Schmidt, and Andy Rubin. These executives have commented publicly on the alleged impact of Microsoft patents, patent claims, and litigation on Android, and may possess important evidence relevant to Barnes & Noble’s claims that Microsoft’s alleged conduct has had an anti-competitive effect. In addition, we ask that Google identify an appropriate custodian covering investor relations at Google, as certain statements regarding the impact of alleged Microsoft conduct have occurred in the context of, for example, discussions in quarterly earnings calls. Therefore, with respect to Requests 4-6, 15, and 16, Microsoft can agree to limit Google’s search to these custodians (Page, Brin, Schmidt, Rubin and an investor relations custodian to be named), in addition to the four individuals you named for Requests 1-3 and 7-12. This limitation is subject to the same caveat above that if the documents indicate a more appropriate custodian, such a custodian can be added.
- With the custodial limitations described above, the privilege issue should largely be resolved. Nevertheless, Microsoft agrees that if Google demonstrates that its searches are returning an unreasonable number of privilege hits, it will consider appropriate limits on what must be included in a privilege log.
- Lastly, Microsoft can agree to withdraw Requests 13 and 14.

Please let me know as soon as possible if these compromises are acceptable to your client.



**ORRICK**

**RICHARD A. RINKEMA**

*Senior Associate*

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

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[rrinkema@orrick.com](mailto:rrinkema@orrick.com)

---

**From:** Kevin Smith <[kevinsmith@quinnemanuel.com](mailto:kevinsmith@quinnemanuel.com)>  
**Date:** Thu, 27 Oct 2011 16:24:39 -0700  
**To:** Richard Rinkema <[rrinkema@orrick.com](mailto:rrinkema@orrick.com)>  
**Cc:** David Perlson <[davidperlson@quinnemanuel.com](mailto:davidperlson@quinnemanuel.com)>, Alex Lasher <[AlexLasher@quinnemanuel.com](mailto:AlexLasher@quinnemanuel.com)>, David Perlson <[davidperlson@quinnemanuel.com](mailto:davidperlson@quinnemanuel.com)>  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Dick,

I would like to tentatively offer a compromise proposal for your consideration. I am still awaiting final approval from my client regarding this proposal, but I thought it would be worthwhile to allow you the chance to discuss it with Microsoft and provide feedback.

Under this proposal, Google would agree to collect documents from four custodians who have primary responsibility for relations with handset manufacturers generally and Barnes & Noble specifically. Those custodians include Lan Roche, Android Sales Engineer; Chris Barton, Head of Android Business Development – Americas; John Lagerling, Director, Android Global Partnerships; and Patrick Brady, Director of Android Partner Engineering. Google would search for and collect documents from these custodians that are responsive to Requests 1-3 and 7-12.

In addition, in response to Request 17, Google can provide non-confidential documents identifying past and projected U.S. Android shipments. To the extent Microsoft would like confidential information on third-party Android shipments, Google will have to evaluate whether it is obligated to provide notice and an opportunity to move for a protective order to third-party device manufacturers.

I am available to schedule a time to discuss.

**Kevin Smith**

*Associate,*

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**From:** Kevin Smith  
**Sent:** Wednesday, October 26, 2011 4:05 PM  
**To:** 'Rinkema, Richard A.'; 'Rinkema, Richard A.'  
**Cc:** Alex Lasher; David Perlson; Alex Lasher; David Perlson  
**Subject:** RE: 337-769: Certain Handheld Electronic Computing Devices

Rick,

Thanks for the response. I am conferring with Google and expect to be able to respond to your email tomorrow.

**Kevin Smith**

Associate,

Quinn Emanuel Urquhart & Sullivan, LLP

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**From:** Rinkema, Richard A. [<mailto:rrinkema@orrick.com>]

**Sent:** Wednesday, October 26, 2011 10:40 AM

**To:** Kevin Smith

**Cc:** Alex Lasher; David Perlson

**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Thank you for your email today confirming that Google is searching for documents responsive to Requests 1, 2, 3, 7, 9, and 11.

With respect to Requests 4, 5, 8, 10, 12, 14, and 17, I note in response:

- Microsoft already has agreed to exclude from these Requests any documents relating solely to entities other than Microsoft.
- We have repeatedly confirmed, during our meet-and-confer and in my October 18, 2011, e-mail as well as in the text of the Requests themselves, that the Requests apply to *business* evaluations, assessments, strategy discussions, or analyses (Requests 4, 5), *business* discussions with device manufacturers (Requests 8, 10, 12), and *business* plans or strategies (Request 14). Google's insistence that the "vast majority, if not all" of these requested business documents will be protected is baseless.
- Despite the specific language of the Requests and Microsoft's repeated confirmation that it seeks business documents, Microsoft nevertheless offered, both in our meet-and-confer and in my October 18 email, to consider any reasonable and specific limitations Google may propose that will expedite production and lessen the purported burden. Google has not responded with any proposed limitations at all.
- Request 17 seeks, again pursuant to a limitation Microsoft agreed to in order to lessen Google's production burden, documents sufficient to identify historical and projected unit shipments of Android. There is no possible interpretation of this Request that could implicate the work product doctrine or attorney-client privilege. Google clearly would be in possession of any such projections relating to the overall Android market. The Request clearly is relevant to the impact, if any, of Microsoft's alleged conduct on Android shipments.
- The relevance of all of the Requests is self-evident, but for purposes, hopefully, of narrowing this dispute:
  - Microsoft provided additional, detailed descriptions of the relevance of Requests 10 and 14 at Google's request.
  - All of the Requests relate to Google's knowledge of the impact, if any, on Android of conduct that Barnes & Noble alleges harms Android.
  - Google is an entity that would be in a position to understand the impact of any alleged conduct on the overall market for Android devices.

Furthermore, you have not addressed whether Google intends to search for documents responsive to Requests 6, 13, 15 or 16. Microsoft has provided detailed explanations of the relevance of these Requests. As with other Requests, Microsoft has sought business documents in these four Requests, and any privilege implications should be minimal (and in the case of Requests 13, 15, and 16, practically non-existent). With respect to Request 6, Microsoft has again indicated that it will consider reasonable and specific suggested limitations from Google, and Google has declined to offer any.

Microsoft's explanations, limitations, and offers apply equally to Google's objections to the deposition topics in the subpoena *ad testificandum*.

Microsoft agreed to provide Google with a one-week extension of the production deadline, then a two-day extension of the response deadline, and then, in conjunction with the extension of fact discovery, offered a further two-week extension of the production deadline. In order to lessen the burden on Google and in the spirit of cooperation, Microsoft has agreed to significant and unnecessary limitations on the documents Google must produce, and offered to continue working with Google. Google has not responded in kind. Please let me know by the close of business today, Pacific time, whether Google will reconsider its refusal to search for and produce documents responsive to Requests 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, and 17. Otherwise, Microsoft will consider us to be at an impasse and seek to enforce the subpoena immediately.

Regards,

Dick



**RICHARD A. RINKEMA**  
*Senior Associate*

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=====  
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# Exhibit M

## Rinkema, Richard A.

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**From:** Rinkema, Richard A.  
**Sent:** Thursday, November 03, 2011 3:07 PM  
**To:** 'Kevin Smith'  
**Cc:** Alex Lasher; Perlson, David  
**Subject:** 337-769: Certain Handheld Electronic Computing Devices

Kevin,

Microsoft has sufficiently explained the relevance of Requests 4-6 and 16 to Barnes & Noble's patent misuse defense in this Investigation. The case law on the relevance of an anti-competitive effects analysis to the patent misuse defense is well established, as affirmed most recently in *Princo Corp. v. Int'l Trade Comm'n*, 616 F.3d 1318, 1340 (Fed. Cir. 2010) (the "key inquiry" for patent misuse is whether the patentee "has impermissibly broadened the physical or temporal scope of the patent grant and has done so in a manner that has anticompetitive effects"). Indeed, Barnes & Noble agreed that this is the "key inquiry" with respect to its misuse defense and that any effects must take place in a relevant market, on page 9 of its response to Microsoft's motion to strike.

Further, Microsoft does not agree that Google may produce documents generated only prior to the date of Microsoft's subpoena. The Requests are continuing in nature and encompass responsive documents current to the date of Google's response and forward.

We are clearly at an impasse as to these Requests (and the corresponding deposition topics). Absent a change of heart by Google before noon Eastern tomorrow, Microsoft intends to move to enforce the subpoenas.



**ORRICK**

**RICHARD A. RINKEMA**

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# Exhibit N

ANDROID

# open source project

[Home](#)[Source](#)[Compatibility](#)[Tech Info](#)[Community](#)[About](#)

## Welcome to Android

Here you can find the information and source code you need to build an Android-compatible device.

Android is an open-source software stack for mobile devices, and a corresponding open-source project led by Google. We created Android in response to our own experiences launching mobile apps. We wanted to make sure that there was no central point of failure, so that no industry player can restrict or control the innovations of any other. That's why we created Android, and made its source code open.

[Learn more »](#)



### News

#### Compatibility Definition for Android 2.3

The Compatibility Definition Document for Android 2.3.3 has been published. Android 2.3 allows device manufacturers to use the Android source code to ship a significantly wider variety of devices, including devices with extra-large screens, such as tablets. Android 2.3.3 adds enhanced Near-Field Communications support to the Android APIs. For more information, visit the [Compatibility](#) page.

#### Source Code Available for Android 2.3

The source code for the Android 2.3 platform and software stack has been released! This release allows OEMs to begin preparing Android 2.3 for installation on new and existing devices, and allows hobbyists, enthusiasts, and researchers to develop custom builds. For information on how to obtain the software, visit our [Getting the Source](#) page.

## Source



If you're interested in contributing to the Android source code or helping out with the open-source project, our Source pages have the information you need.

[Get Involved »](#)

## Compatibility



If you're an organization building an Android device, you'll want to check out our Compatibility pages to find out how to take advantage of the benefits of compatibility.

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I hereby certify that a copy of the foregoing **COMPLAINANT MICROSOFT CORPORATION'S MOTION TO CERTIFY AND MEMORANDUM IN SUPPORT OF MOTION TO CERTIFY TO THE COMMISSION A REQUEST FOR JUDICIAL ENFORCEMENT OF SUBPOENAS *DUCES TECUM* AND *AD TESTIFICANDUM* ISSUED TO GOOGLE INC. AND REQUEST FOR SHORTENED TIME TO RESPOND** was served to the parties, in the manner indicated below, this 9th day of November 2011:

The Honorable James R. Holbein  
Secretary  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W., Room 112A  
Washington, DC 20436

- VIA HAND DELIVERY
- VIA ELECTRONIC MAIL

Theodore R. Essex  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W., Room 317N  
Washington, DC 20436

- VIA HAND DELIVERY

Jeffrey Hsu  
Office of Unfair Import Investigations  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W., Room 404-J  
Washington, DC 20436

- VIA HAND DELIVERY
- VIA ELECTRONIC MAIL

**Counsel for Respondents Barnes & Noble, Inc.  
and barnesandnoble.com LLC**

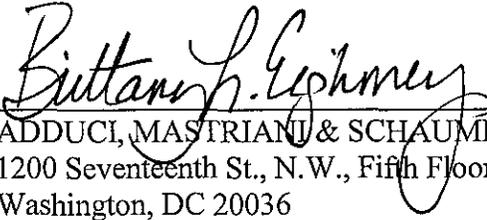
Marcia H. Sundeen  
Jeffrey S. Gerchick  
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- VIA FIRST CLASS MAIL
- VIA OVERNIGHT DELIVERY

**Counsel for Respondents Hon Hai  
Precision Industry Co., Ltd, Foxconn  
Electronics, Inc. Foxconn Precision  
Component (Shenzhen) Co. Ltd., and  
Foxconn International Holdings Ltd.**

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