

**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**

**COMPLAINANT MICROSOFT CORPORATION'S REQUEST  
FOR RECEIPT OF EVIDENCE WITHOUT A SPONSORING WITNESS**

Pursuant to Commission Rule 210.37(b), Ground Rule 9.8.12, and Order No. 28, Complainant Microsoft Corporation hereby submits a Request for Receipt of Evidence Without a Sponsoring Witness, as further set forth below.

**I. INTRODUCTION**

Good cause exists to admit these exhibits into evidence, as they are relevant, material, reliable, and non-controversial. Moreover, Microsoft makes this request in order to streamline the hearing and to avoid the process of requiring a witness to identify and authenticate certain non-controversial exhibits. Accordingly, for the reasons set forth below, Microsoft respectfully requests that each of the following exhibits be admitted into evidence without a sponsoring witness at the hearing.

**II. APPLICABLE STANDARD**

The general rule set forth by Ground Rule 9.8.12 is that each exhibit offered into evidence shall have a "sponsoring witness," subject to an exception. Ground Rule 9.8.12 provides the exception:

[I]f a party believes evidence to be non-controversial and to be appropriate for receipt in evidence without a sponsoring witness,

that party may present with each such exhibit on or before the due date set forth in the procedural schedule: (1) an affidavit or declaration that the declarant prepared or someone under the declarant's direction prepared the exhibit; (2) a request that the exhibit be received in evidence without a witness at the hearing; and (3) a statement of grounds for receiving the exhibit in evidence without a witness at the hearing. Any party who wishes to cross-examine the declarant may object in writing within three (3) days of service of the affidavit or declaration and request, specifying whom the party intends to examine. In the absence of objections, and upon good cause shown, the exhibit shall be received in evidence without a witness subject to the right of objection on other grounds.

G.R. 9.8.12.

To be entered into evidence without a sponsoring witness, the exhibit must be "[r]elevant, material and reliable evidence." 19 C.F.R. § 210.37(b). Regarding reliability, Ground Rule 9.8.11 provides that "[a]ll documents that appear to be regular on their face shall be deemed authentic, unless it is shown by particularized evidence that the document is a forgery or is not what it purports to be."

### **III. DISCUSSION**

Microsoft submits that copies of the following documents should be received at the hearing without a sponsoring witness:

1. **CX-0001** (copy of a certified copy of U.S. patent no. 6,957,233; submitted as exhibit 11 to Microsoft's Complaint and to Microsoft's Amended Complaint)
2. **CX-0002** (copy of a certified copy of the file history of U.S. patent no. 6,957,233; submitted as appendix I to Microsoft's Complaint and to Microsoft's Amended Complaint)
3. **CX-0003** (copy of a certified copy of U.S. patent no. 6,891,551; submitted as exhibit 9 to Microsoft's Complaint and to Microsoft's Amended Complaint)
4. **CX-0004** (copy of a certified copy of the file history of U.S. patent no. 6,891,551; submitted as appendix G to Microsoft's Complaint and to Microsoft's Amended Complaint)

5. **CX-0005** (copy of a certified copy of U.S. patent no. 5,889,522; submitted as exhibit 5 to Microsoft's Complaint and to Microsoft's Amended Complaint)
6. **CX-0006** (copy of a certified copy of the file history of U.S. patent no. 5,889,522; submitted as appendix C to Microsoft's Complaint and to Microsoft's Amended Complaint)
7. **CX-0007** (copy of a certified copy of U.S. patent no. 5,778,372; submitted as exhibit 3 to Microsoft's Complaint and to Microsoft's Amended Complaint)
8. **CX-0008** (copy of a certified copy of the file history of U.S. patent no. 5,778,372; submitted as appendix A to Microsoft's Complaint and to Microsoft's Amended Complaint)
9. **CX-0011** (copy of a certified copy of the assignment for U.S. patent no. 5,778,372; submitted as exhibit 4 to Microsoft's Complaint and to Microsoft's Amended Complaint)
10. **CX-0012** (copy of a certified copy of the assignment for U.S. patent no. 5,889,522; submitted as exhibit 6 to Microsoft's Complaint and to Microsoft's Amended Complaint)
11. **CX-0014** (copy of a certified copy of the assignment for U.S. patent no. 6,891,551; submitted as exhibit 10 to Microsoft's Complaint and to Microsoft's Amended Complaint)
12. **CX-0015** (copy of a certified copy of the assignment for U.S. patent no. 6,957,233; submitted as exhibit 12 to Microsoft's Complaint and to Microsoft's Amended Complaint)
13. **CX-0016C through CX0047** (Microsoft's Verified Complaint and exhibits thereto)
14. **CX-0048 through CX-0055** (Microsoft's Amended Verified Complaint and exhibits thereto)
15. **CX-0056 & CX-0057** (Response of Barnes & Noble Inc. and barnesandnoble.com LLC to the Microsoft's Amended Complaint and exhibits thereto)
16. **CX-0058C, CX-0059C, CX-0060** (Response of Inventec Corporation to Microsoft's Amended Complaint & Inventec's Confidential 210.13(b) Disclosure)
17. **CX-0074** (Second Amended Response of Barnes & Noble Inc. and barnesandnoble.com LLC to Microsoft's Amended Complaint)
18. **CX-0075** (Second Amended Response of Inventec Corporation to Microsoft's Amended Complaint)

19. **CX-0076C** (Joint Stipulation Regarding Importation and Domestic Industry)
20. **CX-0077C** (Supplemental Joint Stipulation Regarding Importation of the Nook Tablet)
21. **CX-0078** (Joint Stipulation Regarding Importation)
22. **CX-0531** (Nook Tablet by Barnes & Noble User Guide)
23. **CX-0532C** (Nook Color by Barnes & Noble User Guide)
24. **CX-0533C** (Nook by Barnes & Noble User Guide)
25. **CX-0468C, CX-0470C, CX-0471C, CX-0473C, CX-0475C, CX-0479C, CX-0480C, CX-0481C, CX-0482C, CX-0483C, CX-0484C** (Barnes & Noble Inc.'s and barnesandnoble.com LLC's responses and supplemental responses to Microsoft's interrogatories)
26. **CX-0469C, CX-0472C, CX-0474C, CX-0476C, CX-0477C, CX-0478C, CX-0485C** (Inventec Corporation's responses and supplemental Responses to Microsoft's interrogatories)
27. Responses and Objections of Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC to Complainant Microsoft Corporation's First Set of Requests for Admission (Nos. 1-75) served on December 16, 2011

**A. Certified Copies of the Patents**

Microsoft submits that certified copies of U.S. patent nos. 6,957,233; 6,891,551; 5,778,372; and 5,889,522 ("the Asserted Patents") should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. These documents are non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. They are of importance to all issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsoring witness will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**B. Certified Copies of the Prosecution Histories and Assignments**

Microsoft further submits that certified copies of the assignments for the Asserted Patents and prosecution histories for the Asserted Patents should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. These documents are also non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. They are of importance to all issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsor will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**C. Complaint, Amended Complaint and Responses Thereto**

Microsoft further submits that copies of its Complaint and Amended Complaint (and all exhibits thereto), as well as Respondents' Responses and Amended Responses (and all exhibits thereto) should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. These documents likewise are non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. They are of importance to all issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsor will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**D. Party Stipulations**

Microsoft further submits that copies of the Joint Stipulation Regarding Importation and Domestic Industry Based on Licensing, the Supplemental Joint Stipulation Regarding

Importation of the Nook Tablet, and the Joint Stipulation Regarding Importation should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. These documents are non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. The Joint Stipulation Regarding Importation and Domestic Industry Based on Licensing and the Supplemental Joint Stipulation Regarding Importation of the Nook Tablet appear as exhibits for both parties. They are of importance to certain issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsor will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**E. User Guides for the Accused Products**

Microsoft further submits that copies of the Nook Simple Touch User Guide, Nook Color User Guide, and the Nook Tablet User Guide should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. These documents likewise are non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. They are of importance to all issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsor will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**F. Responses and Supplemental Responses to Microsoft Interrogatories and Requests For Admission**

Microsoft further submits that copies of the Respondents' responses and supplemental responses to Microsoft's interrogatories and Microsoft requests for admission should be received at the hearing without a sponsoring witness. Microsoft believes that this is unopposed. Interrogatory responses are admissible at the hearing under 19 C.F.R. 210.29(a), and responses to requests for admission conclusively establish any admitted fact under 19 C.F.R. 210.31(d). Furthermore, these documents are non-controversial and are appropriate for receipt into evidence because they are relevant, material, and reliable. They are of importance to all issues being litigated in this investigation, their presence in the record is clear, and the receipt of these documents benefits all parties to this investigation. Permitting introduction of these documents without a sponsor will conserve time and resources at the hearing. As there is no risk of prejudice with the admission of these exhibits without a sponsor, this Request should be granted.

**IV. CONCLUSION**

Each of the above-identified exhibits is non-controversial and appropriate for receipt into evidence without a sponsoring witness. For the reasons stated above, Microsoft respectfully requests that the Administrative Law Judge receive these exhibits without a sponsoring witness at the hearing.

Dated: January 17, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'V. James Adduci II', written over a horizontal line.

V. James Adduci II  
Andrew F. Pratt  
David H. Hollander, Jr.  
Thomas R. Burns, Jr.  
Rowan E. Morris  
ADDUCI, MASTRIANI & SCHAUMBERG, LLP  
1200 Seventeenth Street, NW, Fifth Floor  
Washington, D.C. 20036  
Telephone: (202) 467-6300

Dale M. Heist  
Daniel J. Goettle  
Aleksander J. Goranin  
WOODCOCK WASHBURN LLP  
Cira Centre, 12th Floor  
2929 Arch Street  
Philadelphia, PA 19104  
Telephone: (215) 568-3100

Robert A. Rosenfeld  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
405 Howard Street  
San Francisco, CA 94105  
Telephone: (415) 773-5700

John A. Jurata, Jr.  
Jonathan A. Drenfeld  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1152 Fifteenth Street, NW  
Washington, DC 20005  
Telephone: (202) 339-8400

Brian R. Nester  
SIDLEY AUSTIN LLP  
1501 K Street, NW  
Washington, D.C. 20005  
Telephone: (202) 736-8000



Richard A. Cederoth  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
Telephone: (312) 853-7000

*Counsel for Complainant Microsoft Corporation*

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

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

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

**Investigation No. 337-TA-769**

**DECLARATION OF DANIEL J. GOETTLE**

I, Daniel J. Goettle, declare as follows:

1. I am an attorney at the law firm of Woodcock Washburn, LLP. I have personal knowledge of the facts in this Declaration.
2. I submit this Declaration in support of Complainant Microsoft Corporation's Request for Receipt of Evidence Without a Sponsoring Witness at the Hearing in connection with the above-captioned Investigation.
3. Each of the exhibits labeled with a "CX" number listed in Microsoft's Request for Receipt of Evidence Without a Sponsoring Witness was compiled, labeled with an exhibit number, or otherwise prepared for service and filing by someone acting under my supervision. Each of these exhibits is a true and correct copy of the source documents. Aside from labeling with the exhibit number, none has been altered in any manner.
4. The evidence listed without a "CX" number in Microsoft's Request for Receipt of Evidence Without a Sponsoring Witness was served by counsel for Barnes & Noble in this Investigation. This evidence will be compiled and labeled with an exhibit number as part of Microsoft's rebuttal case by someone acting under my supervision. This evidence will be a true

and correct copy of the source document. Aside from labeling with the rebuttal exhibit number, it will not be altered in any manner.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: January 17, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Goettle", written in a cursive style.

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Daniel J. Goettle

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **COMPLAINANT MICROSOFT CORPORATION'S REQUEST FOR RECEIPT OF EVIDENCE WITHOUT A SPONSORING WITNESS** was served to the parties, in the manner indicated below, this 17<sup>th</sup> day of January 2012:

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

☒ VIA ELECTRONIC FILING  
☐ VIA HAND 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**

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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

/s/ Sara J. Ferguson

Paralegal

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

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