

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of

CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE AND
PRODUCTS CONTAINING SAME

Investigation No. 337-TA-949

**ORDER NO. 24: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION WITH RESPECT TO ACER INC.
AND ACER AMERICA CORP.**

(November 25, 2015)

I. INTRODUCTION

On November 20, 2015, Complainant Andrea Electronics, Inc. (“Andrea”) and Respondents Acer Inc. and Acer America Corporation (collectively “Acer”) filed a joint motion to terminate Acer from the investigation based on a settlement agreement, as well as, a patent technology and license agreement. (Motion Docket No. 951-036) Andrea and Acer also requested a stay of the investigation as to Acer, pending final resolution of the present motion. Additionally, Andrea and Acer requested that the unredacted versions of the agreements be disclosed only to Andrea and Acer, the Commission, the Administrative Law Judge, and the Staff. Andrea and Acer argue that such confidential treatment is appropriate and consistent with Commission precedent, which supports withholding settlement terms of one Respondent from other Respondents, and is further consistent with the public interest which favors settlement.

No party opposes the present motion to terminate.

II. STANDARDS OF LAW

Under Commission Rule 210.21(a)(2),

[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement

19 C.F.R. § 210.21(a)(2).

Commission Rule 210.21(b)(1) further specifies that the motion to terminate must include: (1) copies of the licensing or other settlement agreement; (2) any supplemental agreements; and (3) a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. 19 C.F.R. § 210.21(b)(1). In addition, the Commission Rule requires that the motion must include a public version of any licensing or other settlement agreement containing confidential business information. *Id.*

Under Commission Rule 210.50(b)(2), I must also consider and make appropriate findings regarding the effect of the proposed termination on the public interest. 19 C.F.R. § 210.50(b)(2).

III. DISCUSSION

A. Compliance with Commission Rules

Andrea and Acer filed a confidential version of the motion to terminate that includes a confidential version of the Settlement Agreement (Exhibit A1, hereto), Patent License Agreement (Exhibit A2, hereto), and Stipulation to Dismiss with Prejudice (Exhibit A3, hereto). Additionally, Andrea and Acer filed a public version of the motion to terminate that includes redacted versions (*i.e.*, public versions) of the Settlement Agreement (Exhibit B1, hereto), Patent License Agreement (Exhibit B2, hereto), and Stipulation to Dismiss with Prejudice (Exhibit B3, hereto). Andrea and Acer state that “there are no other agreements, written or oral, express or

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implied, between Andrea and Acer concerning the subject matter of this Investigation.” (*See Motion* at 3.) Accordingly, I find that the requirements of Commission Rule 210.21(b)(1) have been met.

B. Public Interest

With respect to the public interest, Andrea and Acer argue that the termination of the investigation as to Acer will not adversely affect the public interest and “will not affect public health and welfare, competitive conditions of the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.” (*Motion* at 4.) The Staff also argues that there are no public interest concerns weighing against termination of the investigation with respect to Acer. (Staff Response at 3-4.)

I have reviewed the pleadings filed in connection with the present motion to terminate and do not find any information indicating that termination of this investigation on the basis of the Settlement Agreement is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. To the contrary, I find that termination of Acer is in the public interest and will conserve public and private resources. *See, e.g., Certain Consumer Elecs., Including Mobile Phones and Tablets*, Inv. No. 337-TA-839, Order No. 35, 2013 WL 453756, *2 (Feb. 4, 2013) (“[T]ermination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest and will conserve public and private resources.”).

C. Request for Stay

Andrea and Acer request a stay of the procedural schedule deadlines as to Acer, pending final resolution of the motion to terminate. I find under the circumstances that a stay is warranted as it will conserve the resources of the Commission and the parties. *See, e.g., Certain*

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Earpiece Devices Having Positioning and Retaining Structure and Components Thereof, Inv. No. 337-TA-912, Order No. 16, 2014 WL 5768589, *2 (U.S.I.T.C. Oct. 28, 2014).

D. Request for Restricted Distribution of the Unredacted Versions of the Settlement Agreement and Patent Technology and License Agreement

Andrea and Acer request that the unredacted confidential versions of the Settlement Agreement and Patent License Agreement be disclosed only to Andrea and Acer, the Commission, the Administrative Law Judge, and the Staff. I find Andrea and Acer's request is appropriate under the circumstances and is consistent with Commission precedent. *See Certain Machine Vision Software, Machine Vision Systems, and Products Containing the Same*, Inv. No. 337-TA-680, Order No. 17 (Initial Determination), 2009 WL 3535542 (Oct. 26, 2009) (holding that counsel for non-settling respondents were not entitled to receive unreacted financial terms of settlement); *Certain Semiconductor Chips and Products Containing the Same*, Inv. No 337-TA-753, Order No. 26, 2011 ITC LEXIS 1004, (June 20, 2011); *Certain Dynamic Random Access Memory Semiconductors and Products Containing Same, Including Memory Modules*, Inv. 337-TA-707, Order No. 10, 2010 ITC LEXIS 1125, (June 29, 2010); *Certain Automotive Multimedia Display and Navigation Systems*, Inv. No. 337- TA-657, Order No. 27, 2009 ITC LEXIS 1044, (June 23, 2009).

IV. CONCLUSION

Accordingly, for the reasons above, it is my Initial Determination to GRANT the joint motion to terminate (Motion Docket No. 949-036). Accordingly, Acer is hereby terminated from this investigation.

Additionally, Andrea and Acer's request for a stay of the Procedural Schedule deadlines as to Acer pending final disposition of this Initial Determination is GRANTED.

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Further, Andrea and Acer's request for restricted distribution of the unredacted confidential versions of the Settlement Agreement and Patent License Agreement is GRANTED.

This Initial Determination, along with any supporting documentation, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.

A handwritten signature in black ink, reading "Thomas B. Pender", with a long horizontal flourish extending to the right.

Thomas B. Pender
Administrative Law Judge

EXHIBIT A1

(Confidential Settlement Agreement - Redacted)

EXHIBIT A2

(Confidential Patent Licensing Agreement - Redacted)

EXHIBIT A3

(Redacted)

EXHIBIT B1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is effective as of the latest date set out on the signature page hereof (the "Effective Date"), among **Andrea Electronics Corporation**, a New York corporation having a place of business at 620 Johnson Ave., Suite 1B, Bohemia, New York 11716 ("Andrea"); and **Acer Inc.**, a Taiwan corporation having a place of business at 8F, 88, Sec. 1, Xintai 5th Rd., Xizhi, New Taipei City 221, Taiwan R.O.C. and **Acer America Corporation**, a California corporation having a place of business at 333 West San Carlos Street, Suite 1500, San Jose, CA 95110 (together "Acer") (Andrea and Acer may each be referred to as a "Party" or collectively be referred to as the "Parties").

RECITALS

WHEREAS, the Parties wish to resolve the litigations titled *Andrea Electronics Corporation v. Acer Inc. and Acer America Corporation*, Civ. Action No. 2:15-cv-04488 and *Andrea Electronics Corporation v. Acer Inc. and Acer America Corporation*, Civ. Action No. 2:15-cv-00210, both pending in the Eastern District of New York (the "New York Cases"), as well as International Trade Commission Investigation No. 337-TA-949 titled *Certain Audio Processing Hardware and Software and Products Containing the Same*, Inv. No. 337-TA-949 (the "ITC Investigation") (collectively, the "Litigations"); and

WHEREAS, Andrea has granted Acer Inc. and its Subsidiaries a license to the Asserted Patents, the License Agreement being attached hereto as Confidential Exhibit A.

In consideration of the mutual promises and covenants herein contained, Andrea and Acer agree as follows:

AGREEMENT

SECTION 1: DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings which shall include both singular and plural forms in context. Additional terms may be defined elsewhere in this Agreement.

1.1. "Asserted Patents" means all patents asserted by Andrea in the Litigations, namely, the following U.S. Patents: 5,825,898; 6,049,607; 6,363,345; 6,483,923; and 6,377,637.

1.2. "Control" (including its correlative meanings, "Controlled" and "Controlling") means the power to direct or cause the direction of the management and policies of an Entity whether through ownership of voting securities, by contract or otherwise; it being understood and agreed that with respect to a corporation, limited liability company, partnership, and similar structures, "Control" shall also require (a) ownership of more than fifty percent (50%) of the voting stock, limited liability interest, partnership interest,

or other voting interest (or equivalent interest), in any such corporation, limited liability company, or partnership, or (b) in any country where it is not permitted by law to own more than fifty percent (50%) of the voting stock, limited liability interest, partnership interest, or other voting interest (or equivalent interest) in a local corporation, limited liability company, or partnership, ownership of the maximum legally allowed ownership interest of the voting stock, limited liability interest, partnership interest, or other voting interest (or equivalent interest) of the local corporation, limited liability company, or partnership.

1.3. "Entity" means a natural person, corporation, association, joint venture, partnership, company, limited liability company or other legal entity recognized in any jurisdiction in the world.

1.4. "License Agreement" shall mean the License Agreement between Andrea and Acer, attached as Exhibit A.

1.5. "Subsidiary" shall mean any Entity directly or indirectly Controlled by a Party, as of the Effective Date.

SECTION 2: DISMISSALS

2.1. Dismissals. Subject to the terms and conditions herein the Parties shall file the following:

- a. Andrea and Acer shall file a motion to terminate the ITC Investigation substantially in the form set forth in Exhibit B within ten (10) days of the Effective Date.
- b. Within five (5) court days of the receipt of payment by Andrea as set forth in Section 3.1 of the License Agreement, the Parties shall file stipulations of dismissal with prejudice regarding all claims and counterclaims asserted against each other in the New York Cases substantially in the form set forth in Exhibit C.

2.2. Releases. Andrea and its Subsidiaries and Acer and its Subsidiaries hereby release all claims, counterclaims and/or defenses relating to the Asserted Patents that were brought or could have been brought in the New York Cases as of the Effective Date.

2.3. No Costs. The Parties agree that this Agreement is intended solely as a compromise between the Parties and without any acknowledgment of liability, fault, or damages. The Parties acknowledge and agree that each Party shall bear its own attorneys' fees, court costs, expenses, and any other related costs and expenses that they have incurred in connection with any and all claims previously filed against each other. The Parties also agree that they shall bear their own costs and attorneys' fees relating to or arising from the negotiation and performance of this Agreement.

**SECTION 3
MISCELLANEOUS**

3.1. Term. The rights granted under this Agreement, if any, shall commence upon the Effective Date.

3.2. No Other Obligations. Neither Party shall have any other responsibilities or obligations in connection with actions to enforce or defend the Asserted Patents.

3.3. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties, successors and assignees. Notwithstanding the preceding, it is understood that no assignment will release either Party or their Subsidiaries from any of their obligations hereunder.

**SECTION 4
NOTICE**

4.1. Written Notices. Any notices under this Agreement shall be in writing and delivered by facsimile transmission, electronic mail, overnight express mail or express courier service to such Party at the address given below, or such other address as provided by a Party by written notice in accordance with this Section, and shall be effective on receipt. Notwithstanding the foregoing, notices and other communications sent by facsimile transmission or electronic mail shall be effective upon the sender's receipt of an acknowledgement from the intended recipient. This paragraph in no way constitutes waiver of service of process in any litigation between the parties.

For Andrea: Andrea Electronics Corporation
620 Johnson Ave., Suite 1B
Bohemia, New York 11716

For Acer: Acer America Corporation
333 West San Carlos Street, Suite 1500
San Jose, CA 95110
Attention: Legal Department

and

Acer Incorporated
8F, 88, Sec. 1, Xintai 5th Rd.
Xizhi, New Taipei City 221, Taiwan R.O.C.
Attention: Legal Division, General Counsel

SECTION 5 GOVERNING LAW AND JURISDICTION

5.1. Governing Law. The Parties agree that this Agreement shall be considered to have been made in, and construed and interpreted in accordance with the substantive laws of the State of New York, without regard to its conflict of laws principles.

5.2. Jurisdiction. The Parties hereby submit to, and waive any venue objections against, the sole and exclusive jurisdiction of the state and federal courts located in the State of New York.

SECTION 6 WARRANTIES; COVENANTS; LIMITATION OF LIABILITY

6.1. Limited Warranty. Each Party represents and warrants that it has the full authority to enter into and fully perform this Agreement; and that this Agreement is valid and binding and enforceable in accordance with its terms.

SECTION 7 CONFIDENTIALITY

7.1. Duty to Maintain Confidentiality. Either Party may publicly disclose this Agreement, except that the License Agreement, Exhibit A, may only be disclosed in accordance with the Confidentiality obligations contained therein.

SECTION 8 MISCELLANEOUS

8.1. Counterparts. This Agreement may be executed in counterparts in the English language and each executed document shall be deemed an original thereof.

8.2. Entire Agreement; Construction. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all written and oral prior agreements and understandings with respect thereto.

8.3. Modification. No variation or modification of the terms of this Agreement or any waiver of any of the terms or provisions hereof shall be valid unless in writing and signed by an authorized representative of each of the Parties.

8.4. Severability; Interpretation. This Agreement is subject to the restrictions, limitations, terms and conditions of all applicable governmental regulations, approvals and clearances. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect for any reason, that invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein, and instead had been included in such manner as to lawfully effectuate the intent of such term or provision. The Parties acknowledge that each Party was represented by legal counsel in connection with this Agreement and that each of them and its counsel have reviewed this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any applicable amendments or any exhibits.

8.5. Waiver. Failure by either Party to enforce any rights under this Agreement for any length of time shall not be construed as a waiver of such rights nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.


8.6. Remedies. In the event of a breach of this Agreement, in addition to the right to enforce its rights under this Agreement, each Party shall retain any and all rights and/or remedies, at law or in equity.

8.7. No Admission. The Parties agree that this Agreement or anything contained herein shall not constitute an admission by Acer of infringement, validity or enforceability of any of the Asserted Patents.

* * * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized officers effective on the Effective Date.

Andrea Electronics Corporation

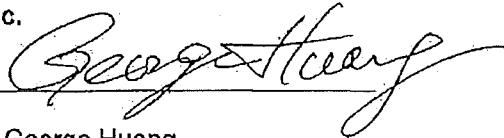
By: 

Name: Douglas ANDREA

Title: CEO

Date: NOV. 17TH 2015

Acer Inc.

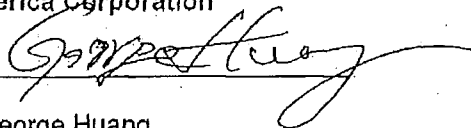
By: 

Name: George Huang

Title: Chairman

Date: NOV. 16TH 2015

Acer America Corporation

By: 

Name: George Huang

Title: Chairman

Date: NOV. 16TH 2015

EXHIBIT B2

EXHIBIT A

PATENT LICENSE AGREEMENT

This Patent License Agreement ("Agreement") is effective as of the latest date set out on the signature page hereof (the "Effective Date"), among **Andrea Electronics Corporation**, a New York corporation having a place of business at 620 Johnson Ave., Suite 1B, Bohemia, New York 11716 ("Licensor"); and **Acer Inc.**, a Taiwan corporation having a place of business at 8F, 88, Sec. 1, Xintai 5th Rd. Xizhi, New Taipei City 221, Taiwan ROC and **Acer America Corporation**, a California corporation having a place of business at 333 West San Carlos Street, 1500, San Jose, CA 95110 (together, "**Acer**" or "Licensee") (Licensor and Licensee may each be referred to as a "Party" and collectively the "Parties").

RECITALS

WHEREAS, Licensor desires to grant and Licensee desires to acquire: a nonexclusive, non-transferable license under the Asserted Patents as well as certain other rights and covenants.

In consideration of the mutual promises and covenants herein contained, Licensor and Licensee agree as follows:

AGREEMENT

SECTION 1: DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings which shall include both singular and plural forms in context. Additional terms may be defined elsewhere in this Agreement.

- 1.1. "Andrea Patents" means (a) all United States and foreign patents assigned to Licensor on or before the Effective Date, including the Asserted Patents; (b) all pending United States and foreign patent applications assigned to Licensor on or before the Effective Date, and any United States or foreign patents issuing therefrom; and (c) all reexaminations, *inter partes* reviews, reissues, continuations (including continued prosecution applications), continuations-in-part, divisionals, renewals and extensions that have issued or may issue from any of the patents or patent applications identified in (a) and/or (b) above that are assigned to Licensor, without regard to the filing date thereof. The United States patents and patent applications listed in APPENDIX A attached hereto are assigned to Licensor as of the Effective Date and are included in the definition of Andrea Patents.
- 1.2. "Asserted Patents" means all patents asserted in the Litigations, namely, the following US Patents: 5,825,898; 6,049,607; 6,363,345; 6,483,923; and 6,377,637.

1.3. "Change of Control" will be deemed to have occurred as to a Party upon the earliest to occur of any of the following events, each of which will be determined independently of the others: (a) through a single transaction or series of related transactions, where such Party is subject to a merger, acquisition, consolidation, or other form of business combination through which another Entity obtains Control of the Party; or (b) as to Licensee, a sale of all or substantially all of the assets or stock or business of Licensee related to the Licensed Products to a third-party Entity.

1.4. "Control" (including its correlative meanings, "Controlled" and "Controlling") means the power to direct or cause the direction of the management and policies of an Entity whether through ownership of voting securities, by contract or otherwise; it being understood and agreed that with respect to a corporation, limited liability company, partnership, and similar structures, "Control" shall also require (a) ownership of more than fifty percent (50%) of the voting stock, limited liability interest, partnership interest, or other voting interest (or equivalent interest), in any such corporation, limited liability company, or partnership, or (b) in any country where it is not permitted by law to own more than fifty percent (50%) of the voting stock, limited liability interest, partnership interest, or other voting interest (or equivalent interest) in a local corporation, limited liability company, or partnership, ownership of the maximum legally allowed ownership interest of the voting stock, limited liability interest, partnership interest, or other voting interest (or equivalent interest) of the local corporation, limited liability company, or partnership.

1.5. "Entity" means a natural person, corporation, association, joint venture, partnership, company, limited liability company or other legal entity recognized in any jurisdiction in the world.

1.6. "Acer Products" shall mean and be explicitly limited to all products, systems, or devices assembled by or for Licensee and/or its Subsidiaries and that are sold under and have affixed to them any trademark, service mark or any other identifying mark associated with Licensee and/or its Subsidiaries owned as of the Effective Date by Licensee or its Subsidiaries in a manner that is visible to the purchaser of such products, systems, and devices and is reasonably intended to identify Licensee or its Subsidiary as the origin of such product, system, or device.

1.7. "Subsidiary" shall mean any Entity directly or indirectly Controlled by a Party as of the Effective Date.

SECTION 2: GRANT OF LICENSES, RELEASES, AND COVENANTS

2.1. Grant of License. Subject to and contingent upon Licensee's performance of its obligations, and satisfaction of the conditions set forth in this Agreement, Licensor and its Subsidiaries grants to Licensee and its Subsidiaries:

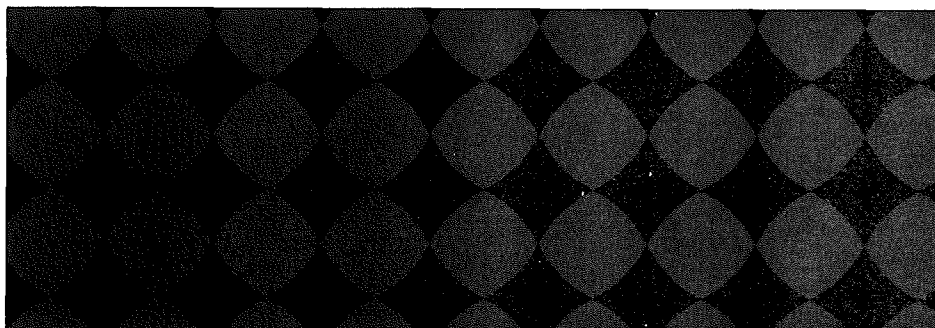
2.1.1. a worldwide, nonexclusive, irrevocable (except as permitted herein), non-transferable (except as permitted below), perpetual, and fully paid-up license, without the right to sublicense, under the Asserted Patents to make, have made, use, import,

export, offer for sale, sell, and otherwise dispose of Acer Products anywhere in the world.

2.2. Releases. Subject to and contingent upon performance of the obligations set forth herein, including Licensee's obligation to pay Licensor the Payment on or before the Payment Due Date pursuant to Section 3.1, and satisfaction of the conditions set forth in this Agreement, both Parties and their Subsidiaries hereby irrevocably release any and all claims related to the Andrea Patents that have been brought or could have been brought by the Parties or their Subsidiaries with respect to Acer Products sold, offered for sale, made, had made, used, imported or otherwise transferred by or for Licensee before the Effective Date (the "Release"). The Release shall extend to third parties (including, without limitation, any customers, end-users, suppliers, manufacturers, distributors, and resellers of Licensor and its Subsidiaries), but only to the extent that any claim for infringement of the Andrea Patents is based on the manufacture, use, sale, offer for sale, importation or other disposition of Acer Products prior to the Effective Date. The Parties agree that this Agreement is intended solely as a compromise between the Parties and without any acknowledgment of liability, fault or damages. The Parties acknowledge and agree that each Party shall bear its own attorneys' fees, court costs, expenses, and any other related costs and expenses that they have incurred in connection with any and all claims previously filed against each other. The Parties also agree that they shall bear their own costs and attorneys' fees relating to or arising from the negotiation and performance of this Agreement.

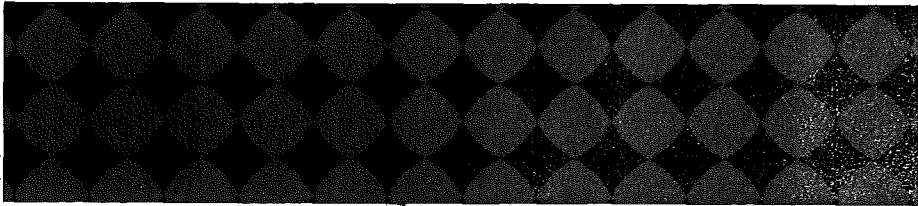
2.3. Covenants Not to Sue or Assert.

a.



b.





2.4. Covenant Not to Challenge Asserted Patents. Licensee and its Subsidiaries covenant that they will not challenge, or knowingly assist others in challenging, the validity and/or enforceability of any of the Asserted Patents, in whole or in part, including, but not limited to, through the filing of declaratory judgment actions or reexaminations, post-grant, or inter partes review proceedings. The term "assist" means with respect to a party that challenges the validity and/or enforceability of any of the Asserted Patents: (a) funding such party to challenge the validity and/or enforceability of one or more of the Asserted Patents, or any part thereof; (b) providing such party with any analysis of any of the Asserted Patents, or any portion thereof; or (c) providing any prior art or any analysis of any prior art to any of the Asserted Patents to such party. However, in the event of (a) a Change of Control of Licensee whereafter Licensor initiates a lawsuit alleging infringement of the Asserted Patents against the acquiring Entity or (b) the acquisition by Licensee of a third-party Entity whereafter Licensor initiates a lawsuit alleging infringement of the Asserted Patents against the third-party Entity acquired by Licensee or its Subsidiaries, this Section 2.4 will not apply.

2.5. No Implied Rights. Except as expressly set forth in this Section 2, no other rights, licenses, covenants or releases under the Asserted Patents or Andrea Patents are granted by implication, estoppel or otherwise under this Agreement.

SECTION 3 PAYMENT

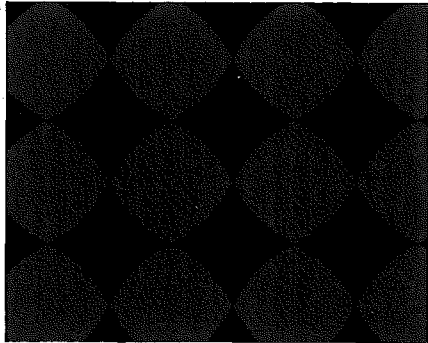
3.1. Payment. In consideration for the rights, releases, covenants and licenses granted to Licensee and its Subsidiaries under this Agreement, Licensee agrees to pay to Licensor



The Payment shall be due and payable within forty five (45) business days after the Effective Date and shall be made by wire transfer of immediately available funds pursuant to the written instructions provided below (the "Payment"). Upon full and timely payment of the Payment, the rights, releases, covenants and licenses granted to Licensee under this Agreement, shall be deemed "fully paid-up." For clarity, in the event that the Payment is not paid by Licensee on or before the Payment Due Date, such failure shall constitute a material breach of this Agreement.

Wiring Instructions:





3.2. Taxes. To the extent that the Payment is subject to any taxes, government fees, duties, or the like imposed under the laws of any country of Licensee, Licensee shall be responsible for payment of such tax, meaning that such taxes, government fees, duties, or the like shall not be deducted from the Payment. For purposes of clarity, Licensee acknowledges and agrees that the amount of the wire transfer of the Payment to Licensor shall be no less than the full aggregate amount set forth in Section 3.1. Licensor agrees to provide any assistance and documentation that is necessary or helpful to Licensee to comply with any requests or requirements of the applicable taxing authorities including, without limitation, obtaining and delivering to Licensee a residency certificate issued by the Internal Revenue Service or other documentation certifying that Licensor is a U.S. entity and a resident of the United States of America for purposes of U.S. taxation, tax treaty forms, and any other document reasonably requested to eliminate any withholding tax requirement that might otherwise be imposed on or in connection with payment of the Payment by Licensee.

SECTION 4 TERM, TERMINATION AND REVOCATION

4.1. Term. Subject to timely payment of the Payment by Licensee, and unless earlier terminated under Sections 4.2, 4.3 or 4.5, the rights granted under this Agreement shall commence upon the Effective Date and shall expire upon the later of: (a) the expiration of the last-to-expire of the Asserted Patents (the "Term") or (b) the expiration of the Covenants Not to Sue or Assert set forth in Section 2.3.

4.2. Termination by Licensee. This Agreement is terminable by Licensee upon thirty (30) days written notice to Licensor. Any such termination shall be irrevocable and Licensee shall not have any right to a refund of all or any portion of the Payment.

4.3. Termination by Licensor. In addition to any other remedy set forth herein, at law or in equity, Licensor shall have the right to terminate this Agreement immediately upon written notice if Licensee files a petition requesting liquidation or dissolution of the Licensee in any form, under the laws of the United States or any other bankruptcy or insolvency law; or the making by Licensee of any assignment for the benefit of its creditors.

4.4. Effect of Termination. Upon the termination of this Agreement for any reason, all rights, licenses and covenants granted by Licensor shall terminate. Sections 1 (and such other defined terms set forth in this Agreement), 3, 4, 8, 9, 10 and 11 shall survive termination of this Agreement indefinitely. No termination of this Agreement, for any reason, whether for or without cause, shall entitle Licensee to a refund or return of any portion of the Payment unless the termination is under section 9.1.

4.5. Termination of Agreement Due to Challenge of Licensor Patent. Should Licensee or a Subsidiary breach section 2.4 by challenging or assisting or causing any third party to challenge the validity or enforceability of one or more of the Asserted Patents, Licensor, at its sole and absolute discretion, may terminate any or all of rights conferred by this agreement. Notwithstanding the foregoing, this Section 4.5 shall have no effect if Licensee or its Subsidiaries are alleged to infringe any claims of the Asserted Patents. Termination under this Section 4.5 shall not entitle Licensee to a refund or return of any portion of the Payment.

SECTION 5 ENFORCEMENT or DEFENSE

5.1. No Other Obligations. Neither Licensee nor Licensor shall have any other responsibilities or obligations in connection with actions to enforce or defend the Asserted Patents.

SECTION 6 ASSIGNABILITY

6.1. No Assignment by Licensee. This Agreement and the rights, licenses and obligations hereunder may not be assigned, by operation of law or otherwise, by Licensee without the express prior written consent of Licensor, in its sole and absolute discretion. For the purposes of this Agreement, a Change of Control of Licensee (whether in connection with a merger, consolidation, combination, restructuring, or other transaction) shall constitute an assignment, such assignment requiring the express prior written consent of Licensor to have any effect. Similarly, the sale or other disposition of all or substantially all of Licensee's assets or the Acer Products product line shall constitute an assignment requiring Andrea's express prior written consent. The Parties agree that no assignment shall release Licensee from any of its obligations hereunder. Any purported assignment for which the express written consent of Licensor is not obtained shall be void *ab initio*.

6.2. Newly Acquired Entities of Licensee. The rights, releases, covenants and licenses granted to Licensee herein do not extend to any Entity that comes under the Control of Licensee after the Effective Date.

6.3. Assignment by Licensor. Licensor may freely assign this Agreement and its rights hereunder, either expressly or through operation of law, without the prior consent of Licensee; provided that the licenses, releases and covenants encumber and run with the Asserted Patents. Licensor shall impose all of the obligations owed by Licensor

under this Agreement on any successor or assignee of Licensor in ownership or control of any of the Asserted Patents.

6.4. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties, permitted successors and assigns, and successors and assigns of the Asserted Patents. Notwithstanding the preceding, it is understood that no assignment will release either Party or their Subsidiaries from any of their obligations hereunder.

SECTION 7 NOTICE

7.1. Any notices under this Agreement shall be in writing and delivered by facsimile transmission, electronic mail, overnight express mail or express courier service to such Party at the address given below, or such other address as provided by a Party by written notice in accordance with this Section, and shall be effective on receipt. Notwithstanding the foregoing, notices and other communications sent by facsimile transmission or electronic mail shall be effective upon the sender's receipt of an acknowledgement from the intended recipient.

For Licensor: Andrea Electronics Corporation
620 Johnson Ave., Suite 1B
Bohemia, New York 11716

For Licensee: Acer America Corporation
333 West San Carlos Street, Suite 1500
San Jose, CA 95110
Attention: Legal Department

and

Acer Incorporated
8F, 88, Sec. 1, Xintai 5th Rd.
Xizhi, New Taipei City 221, Taiwan R.O.C.
Attention: Legal Division, General Counsel

SECTION 8 GOVERNING LAW AND JURISDICTION

8.1. Governing Law. The Parties agree that this Agreement shall be considered to have been made in, and construed and interpreted in accordance with the substantive laws of the State of New York, without regard to its conflict of laws principles.

8.2. Jurisdiction. The Parties hereby submit to, and waive any venue objections against, the sole and exclusive jurisdiction of the federal courts located in the State of New York.

**SECTION 9
WARRANTIES; COVENANTS; LIMITATION OF LIABILITY**

9.1. Limited Warranty. Licensor represents and warrants that it is a corporation in good standing under the laws of the State of New York; that it has the authority to enter into this Agreement; and that this Agreement is valid and binding and enforceable in accordance with its terms. Licensor further represents and warrants that it owns the Andrea Patents and has the right to grant the licenses and covenants herein. Notwithstanding anything in this Agreement to the contrary, upon timely Notice of a breach of this Section 9.1, and thirty (30) days to cure such breach, Licensee may rescind this Agreement in its entirety and receive refund of the Payment. Upon refund of the Payment under this Section 9.1, the Agreement is null and void in its entirety, including all prior rights, licenses, covenants and releases herein.

9.2. NO OTHER WARRANTY. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, THE ASSERTED PATENTS ARE PROVIDED AS-IS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY, EXPRESS OR IMPLIED, OR REPRESENTATION BY LICENSOR AS TO THE VALIDITY OR SCOPE OF ANY ASSERTED PATENT; A WARRANTY OR REPRESENTATION THAT ANYTHING MADE, USED, SOLD, OR OTHERWISE DISPOSED OF UNDER ANY LICENSE GRANTED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE ACER PRODUCTS, IS OR WILL BE FREE FROM INFRINGEMENT OF PATENTS OF THIRD PERSONS; A WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; A REQUIREMENT THAT EITHER PARTY SHALL FILE ANY PATENT APPLICATION, SECURE ANY PATENT OR MAINTAIN ANY PATENT IN FORCE; AN OBLIGATION TO BRING OR PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OF ANY PATENT; AN OBLIGATION TO FURNISH ANY MANUFACTURING OR TECHNICAL INFORMATION, OR ANY INFORMATION CONCERNING PENDING PATENT APPLICATIONS; CONFERRING A RIGHT TO USE IN ADVERTISING, PUBLICITY, OR OTHERWISE ANY TRADEMARK OR TRADE NAME OF THE PARTY FROM WHICH A LICENSE IS RECEIVED UNDER THIS AGREEMENT; OR GRANTING BY IMPLICATION, ESTOPPEL, OR OTHERWISE ANY LICENSES OR RIGHTS UNDER PATENTS OTHER THAN THE ASSERTED PATENTS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, LICENSOR EXPRESSLY DISCLAIMS AND LICENSEE ACCEPTS SUCH DISCLAIMER OF ANY WARRANTY DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE OF THIS AGREEMENT OR BY OPERATION OF LAW.

9.3. CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL

DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGES TO A PARTY'S BUSINESS REPUTATION HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, INFRINGEMENT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

SECTION 10 CONFIDENTIALITY

10.1. Duty to Maintain Confidentiality. Either Party may publicly disclose the existence of this Agreement, provided, however, that the terms and conditions of this Agreement shall be confidential and shall not be disclosed to any person or entity not a Party to this Agreement, except Subsidiaries, attorneys, accountants and investors who are bound by confidentiality provisions, unless prior written consent is obtained from the other Party, or unless any competent court, regulatory authority or governmental agency orders and/or requires such disclosure, provided however, that in the event that such disclosure is required, the applicable Party who needs to disclose will use good faith efforts to maintain the confidentiality of any terms and/or conditions of this Agreement which are not so required to be disclosed. Licensee may disclose the relevant portions of this Agreement to its customers, suppliers, and/or distributors to the extent necessary to demonstrate the scope of this Agreement that extends to such customers, suppliers, and/or distributors. Furthermore, either Party may, subject to a non-disclosure agreement, disclose this Agreement to third parties in connection with business discussions or in connection with any merger or acquisition proposed or discussions that may lead to such proposal, in each case, for which such Party reasonably deems such disclosure to be necessary. However, in no instance, may Licensee or its Subsidiaries disclose the Payment amount set forth in Section 3.1 without Licensor's prior written consent.

10.2. Disclosure Related to Legal Process. Notwithstanding Section 10.1, a Party may produce this Agreement in response to a subpoena, discovery request or court order, provided such Party produces this Agreement under a "Highly Confidential-Outside Counsel's Eyes Only" designation or similar designation or otherwise makes provisions to protect the confidentiality of this Agreement. The disclosing Party shall notify the other Party as soon as practicable after a disclosure request. Notwithstanding the foregoing, the Parties agree that the Payment amount set forth in Section 3.1 shall not be disclosed to any Respondent or Intervenor in the ITC Investigation, so long as the ITC Investigation is pending, without the other Party's prior written consent.

SECTION 11 MISCELLANEOUS

11.1. Counterparts. This Agreement may be executed in counterparts in the English language and each executed document shall be deemed an original thereof.

11.2. Entire Agreement; Construction. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all written and oral prior agreements and understandings with respect thereto.

11.3. Modification. No variation or modification of the terms of this Agreement or any waiver of any of the terms or provisions hereof shall be valid unless in writing and signed by an authorized representative of each of the Parties.

11.4. Severability; Interpretation. This Agreement is subject to the restrictions, limitations, terms and conditions of all applicable governmental regulations, approvals and clearances. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect for any reason, that invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein, and instead had been included in such manner as to lawfully effectuate the intent of such term or provision. The Parties acknowledge that each Party was represented by legal counsel in connection with this Agreement and that each of them and its counsel have reviewed this Agreement, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any applicable amendments or any exhibits.

11.5. Remedies. In the event of a breach of this Agreement, in addition to the right to enforce its rights under this Agreement, each Party shall retain any and all rights and/or remedies, at law or in equity.

11.6. Waiver. Failure by either Party to enforce any rights under this Agreement for any length of time shall not be construed as a waiver of such rights nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

11.7. No Third Party Beneficiaries. The Parties do not intend to create any rights in third persons and the Parties agree that there are no third party beneficiaries to this Agreement. Only the Parties to this Agreement may enforce this Agreement, claim any right to benefit from this Agreement, or rely upon the existence of this Agreement for its benefit.

11.8. Agency. Nothing in this Agreement shall be construed to constitute the Parties as partners or participating in a joint venture or constitute either Party as agent of the other.


11.9. Bankruptcy. Licensor and Licensee hereto acknowledge and agree that this Agreement is a contract under which Licensor is a licensor to Licensee of rights with respect to intellectual property (including, without limitation, "intellectual property" within the meaning of Section 101 of the Bankruptcy Code of the United States). Licensee shall have all the rights contemplated by Section 365(n) of such Bankruptcy Code with respect to the licenses and other rights described in this Agreement.

11.10. No Admission. The Parties agree that this Agreement or anything contained herein shall not constitute an admission by Licensee of infringement, validity or enforceability of any of the Asserted Patents.

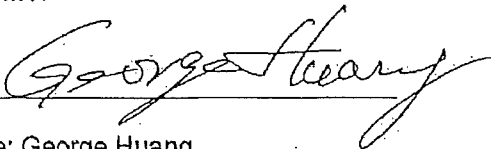
* * * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized officers effective on the Effective Date.

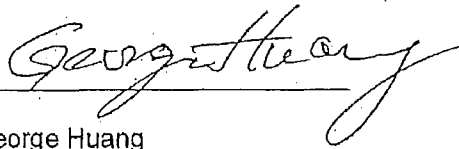
Andrea Electronics Corporation

By: 
Name: DOUGLAS ANDRIENA
Title: CEO
Date: NOV, 17TH 2015

Acer Inc.

By: 
Name: George Huang
Title: Chairman
Date: NOV. 16th, 2015

Acer America Corporation

By: 
Name: George Huang
Title: Chairman
Date: NOV. 16th, 2015

APPENDIX A

Pat. No.	App. No.	Title	Filing Date	Issue Date
5,825,898	08/672,899	System and method for adaptive interference cancelling	27-Jun-1996	20-Oct-1998
6,049,607	09/157,035	Interference canceling method and apparatus	18-Sep-1998	11-Apr-2000
6,108,415	08/953,021	Noise cancelling improvement to a communications device	17-Oct-1997	22-Aug-2000
6,178,248	08/840,159	Dual-processing interference cancelling system and method	14-Apr-1997	23-Jan-2001
6,198,693	09/059,503	System and method for finding the direction of a wave source using an array of sensors	13-Apr-1998	06-Mar-2001
6,332,028	09/055,709	Dual-processing interference cancelling system and method	07-Apr-1998	18-Dec-2001
6,363,345	09/252,874	System, method and apparatus for cancelling noise	18-Feb-1999	26-Mar-2002
6,377,637	09/614,875	Sub-band exponential smoothing noise cancelling system	12-Jul-2000	23-Apr-2002
6,483,923	09/130,923	System and method for adaptive interference cancelling	06-Aug-1998	19-Nov-2002
6,594,367	09/427,410	Super directional beamforming design and implementation	25-Oct-1999	15-Jul-2003
7,319,762	11/482,351	Headset with flashing light emitting diodes	05-Jul-2006	15-Jan-2008

Pat. No.	App. No.	Title	Filing Date	Issue Date
8,150,054	12/332,959	Adaptive filter in a sensor array system	11-Dec-2008	03-Apr-2012
8,542,843	12/429,623	Headset with integrated stereo array microphone	24-Apr-2009	24-Sep-2013
8,767,973	13/291,565	Adaptive filter in a sensory array system	8-Nov-2011	1-Jul-2014
8,818,000	12/916,470	System, device, and method utilizing an integrated stereo array microphone	29-Oct-2010	26-Aug-2014
	14/319,707	Steerable sensor array system with video input	30-Jun-2014	
	14/463,018	System, device, and method utilizing an integrated stereo array microphone	19-Aug-2014	

EXHIBIT B3

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ANDREA ELECTRONICS CORPORATION,

Plaintiff,

v.

ACER INC. and ACER AMERICA CORPORATION,

Defendants.

CIVIL ACTION

NOS. 2:14-cv-04488 and

2:15-cv-210

STIPULATION TO DISMISS WITH PREJUDICE

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiff Andrea Electronics Corp. ("Andrea") and Defendants Acer Inc. and Acer America Corporation (together, "Acer"), by and through their counsel of record and pursuant to the terms of a confidential agreement by and between them, hereby stipulate and agree that:

- (1) All claims and counterclaims between Andrea and Acer shall be dismissed with prejudice; and
- (2) All costs and expenses relating to the claims between Andrea and Acer in this litigation (including attorney and expert fees and expenses) shall be borne solely by the party incurring same.

A proposed Order accompanies this motion.

Dated:

/s/ _____

Goutam Patnaik
Tuhin Ganguly
David J. Shaw
Kelly E. Rose
Pepper Hamilton LLP
Hamilton Square
600 Fourteenth Street, N.W.
Washington, DC 20005 2004
Tel: 202 220 1200
Fax: 202 220 1665

William D. Belanger
Frank D. Liu
Suparna Datta
Gwendolyn E. Tawresey
Ryan C. Deck
Pepper Hamilton LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110 2736
Tel: 617 204 5100
Fax: 617 204 5150

*Counsel for Complainant
Andrea Electronics Corp.*

/s/ _____

Craig R. Kaufman
Fatima Alloo
Kevin Jones
Ken Fung
David Sack
Michael Ting
TechKnowledge Law Group LLP
100 Marine Parkway, Suite 200
Redwood Shores, CA 94065
Telephone: (650) 517-5200
Facsimile: (650) 226-3133

*Counsel for Respondents Acer Inc. and Acer
America Corporation*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ANDREA ELECTRONICS CORPORATION,

Plaintiff,

v.

ACER INC. and ACER AMERICA CORPORATION,

Defendants.

CIVIL ACTION

NOS. 2:14-cv-04488 and

2:15-cv-210

[PROPOSED] ORDER DISMISSING ALL CLAIMS WITH PREJUDICE

Before the Court is Plaintiff Andrea Electronics Corp.'s ("Andrea's") and Defendants Acer Inc. and Acer America Corporation's (together "Acer") Stipulation to Dismiss With Prejudice. The Court finds that dismissal with prejudice should be GRANTED, and orders as follows:

All claims and counterclaims between Andrea and Acer in this litigation shall be dismissed with prejudice.

All costs and expenses relating to the claims between Andrea and Acer in this litigation (including attorney and expert fees and expenses) shall be borne solely by the party incurring same.

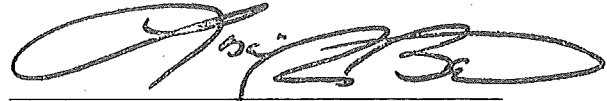
IT IS SO ORDERED.

**IN THE MATTER OF CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE PRODUCTS CONTAINING
SAME**

337-TA-949

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION
ORDER NO. 24** has been served upon the **Commission Investigative Attorney, Lisa Murray,
Esq.**, and the following parties as indicated on NOV 25 2015.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, DC 20436

FOR COMPLAINANTS ANDREA ELECTRONICS CORP.:

Goutam Patnaik, Esq.
PEPPER HAMILTON LLP
600 Fourteenth Street, NW
Washington, DC 20005

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

FOR RESPONDENT ACER INC. & ACER AMERICA CORPORATION:

Craig Kaufman, Esq.
TECHKNOWLEDGE LAW GROUP LLP
100 Marine Parkway, Suite 200
Redwood Shores, CA 94065

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

FOR RESPONDENT DELL INC.

Scott Denko, Esq.
DENKO COBURN LAUFF LLP
3811 Bee Caves Road, Suite 204
Austin, TX 78746

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

FOR RESPONDENT HEWLETT PACKARD CO.

Eric S. Namrow, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue N.W.
Washington, DC 20004

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

