

**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. 33: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION WITH RESPECT TO
RESPONDENTS ASUSTEK COMPUTER INC. AND ASUS
COMPUTER INTERNATIONAL**

(February 4, 2016)

I. INTRODUCTION

On February 2, 2016, Complainant Andrea Electronics, Inc. ("Andrea") and Respondents ASUSTeK Computer Inc. and ASUS Computer International (collectively, "ASUS") filed a joint motion to terminate ASUS from the investigation based on a settlement agreement and a patent license agreement. (Motion Docket No. 949-061) Andrea and ASUS request that this investigation be stayed with respect to ASUS pending review this initial determination by the Commission and that the unredacted versions of the agreements be disclosed only to Andrea and ASUS, the Commission, the Administrative Law Judge, and the Staff. Andrea and ASUS 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.

On February 3, 2016, the Commission Investigative Staff filed a response supporting the motion to terminate. 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 ASUS filed a confidential version of the motion to terminate that includes a confidential version of the Settlement Agreement and Patent License Agreement (Exhibit A1, hereto) and the Stipulation to Dismiss with Prejudice (Exhibit A2, hereto). Additionally, Andrea and ASUS filed a public version of the motion to terminate that includes redacted versions (*i.e.*, public versions) of the Settlement Agreement and Patent License Agreement (Exhibit B1, hereto) and the Stipulation to Dismiss with Prejudice (Exhibit B2, hereto). Andrea and ASUS state that “there are no other agreements, written or oral, express or implied, between Andrea and ASUS

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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 ASUS argue that the termination of the investigation as to ASUS 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 ASUS. (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 ASUS 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 Restricted Distribution of the Unredacted Versions of the Settlement Agreement and Patent Technology and License Agreement

Andrea and ASUS request that the unredacted confidential versions of the Settlement Agreement and Patent License Agreement be disclosed only to Andrea and ASUS, the Commission, the Administrative Law Judge, and the Staff. I find Andrea and ASUS’s request is appropriate under the circumstances and is consistent with Commission precedent. *See*

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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).

D. Request for Stay

Andrea and ASUS request a stay of the Procedural Schedule “including a stay of pre-hearing and hearing-related deadlines, and all other procedural deadlines in the Investigation pending a ruling on this Motion.” Andrea and ASUS’s request for stay pending review of this Initial Determination by the Commission is hereby GRANTED.

IV. CONCLUSION

Accordingly, for the reasons above, it is my Initial Determination to GRANT the joint motion to terminate (Motion Docket No. 949-061). Accordingly, ASUS is hereby terminated from this investigation.

Further, Andrea and ASUS’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

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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", written over a horizontal line.

Thomas B. Pender
Administrative Law Judge

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EXHIBIT A1

**(Confidential Settlement and
Patent Licensing Agreement - Redacted)**

EXHIBIT A2
(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 **ASUSTeK Computer Inc.**, a Taiwan corporation having a place of business at No. 15, Li-Te Rd., Beitou District, Taipei 112, Taiwan and **ASUS Computer International**, a California corporation having a place of business at 800 Corporate Way, Fremont, California 94539 (together, "Asus") (Andrea and Asus 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. ASUSTek Computer Inc. and ASUS Computer International Inc.*, Civ. Action No. 2:15-cv-00214, pending in the Eastern District of New York (the "New York Case"), 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 ASUSTeK Computer 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 Asus 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 Asus, 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 Asus shall file a motion to 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 Case substantially in the form set forth in Exhibit C.

2.2. Releases. Andrea and its Subsidiaries and Asus 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 Case 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 Asus: ASUSTeK Computer Inc.
 No. 15, Li-Te Rd., Beitou District,
 Taipei 112, Taiwan

and

ASUS Computer International
800 Corporate Way, Fremont,
California 94539

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 California, 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 Santa Clara County, the State of California.

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 Asus of infringement, validity or enforceability of any of the Asserted Patents.

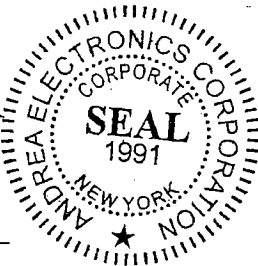
* * * * *

[REDACTED]

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: [Signature]
Name: Douglas Andrea
Title: C.E.O.
Date: 1/12/16



ASUSTeK Computer Inc.

By: [Signature]
Name: Jerry Shen
Title: C.E.O.
Date: 1/27/16

ASUS Computer International

By: [Signature]
Name: Steve Chang
Title: President
Date: 1/14/16

[REDACTED]

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 **ASUSTeK Computer Inc.**, a Taiwan corporation having a place of business at No. 15, Li-Te Rd., Beitou District, Taipei 112, Taiwan, and **ASUS Computer International**, a California corporation having a place of business at 800 Corporate Way, Fremont, California 94539 (together, "Asus") (Licensor and Asus 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 or its Affiliates on or before the Effective Date, including the Asserted Patents; (b) all pending United States and foreign patent applications assigned to Licensor or its Affiliates 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 or its Affiliates, without regard to the filing date thereof. The United States patents and patent applications listed in APPENDIX A attached hereto are assigned to Licensor or its Affiliates 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

[REDACTED]

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

1.8. "Licensee" shall mean Asus and its Subsidiaries, including, but not limited to, ASUS GLOBAL Pte. Ltd.


1.9. "Affiliate" shall mean, with respect to any Entity, that is as of the Effective Date, directly or indirectly Controlled, is Controlled by, or is under common Control with such Entity.

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:

2.1.1. [REDACTED]

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 Asus 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 Licensee), 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 Asus 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. Subject to and contingent upon satisfaction of the conditions set forth in this Agreement, Licensor and its Subsidiaries hereby covenant not to sue or assert any claims against Licensee, including their respective officers, directors, representatives, agents, administrators, assigns, predecessors and successors-in-interest or its customers, end-users, suppliers, manufacturers, distributors and resellers for infringement or alleged infringement of any Asserted Patents, but only to the extent that any claim for infringement or alleged infringement of the Asserted Patents is based on the manufacture, use, sale, offer for sale, importation or other disposition of Asus Products.

b.



[REDACTED]

2.4. Covenant Not to Challenge Asserted Patents. Licensee covenants that it will not, after the dismissal of the Litigations, as that term is defined in the Settlement Agreement, challenge, or knowingly assist others in challenging, the validity and/or enforceability of any of the Asserted Patents, in whole or in part (except to fulfill obligations that have already accrued by the date of the dismissals), 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 (where such lawsuit shall not implicate Asus Products) 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 (where such lawsuit shall not implicate Asus Products), 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

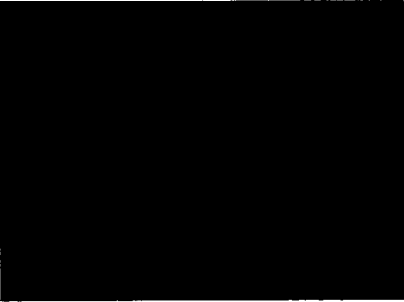

3.1. Payment. In consideration for the rights, releases, covenants and licenses granted to Licensee under this Agreement, Licensee agrees to pay to Licensor [REDACTED]

[REDACTED]

The Payment shall be due and payable within thirty (30) working days after the Effective Date and shall be made by wire transfer of immediately available funds pursuant to the written instructions provided below. 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:

[REDACTED]



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 Licenser shall be no less than the full aggregate amount set forth in Section 3.1. Licenser 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 Licenser 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 expiration of the last-to-expire of the Andrea Patents (the "Term").

4.2. Termination by Licensee. This Agreement is terminable by Licensee upon thirty (30) days written notice to Licenser. 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. [reserved]

4.4. [reserved].

4.5. Termination of Agreement Due to Challenge of Licenser Patent. Should Licensee 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 after dismissal of the Litigations, Licenser may terminate any or all of rights conferred by this Agreement. Notwithstanding the foregoing, this Section 4.5 shall have no effect if Licenser initiates any action against Licensee in which Asus Products 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, except for when such Change of Control operates only between and among Licensee and its Subsidiaries.




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 required under this Section 6.1 and 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 and Andrea 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 and Andrea Patents. The Parties agree that no assignment shall release Licensor from any of its obligations hereunder.

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: ASUSTeK Computer Inc.
No. 15, Li-Te Rd., Beitou District,
Taipei 112, Taiwan

and

ASUS Computer International
800 Corporate Way, Fremont,
California 94539

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 California, 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 Santa Clara County, the State of California.

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; that this Agreement is valid and binding and enforceable in accordance with its terms; and that Appendix A is an accurate listing of all United States patents and patent applications assigned to Licensor and/or its Affiliates as of the Effective Date. 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.

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 ASUS 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. EXCEPT IN INSTANCES OF EITHER PARTY'S WILLFUL MISCONDUCT, 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, except as provided in this paragraph, 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

[REDACTED]

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 disclose the Payment amount set forth in Section 3.1 to any third party other than the indemnifying suppliers/vendors 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. Except as stated in this Agreement, 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. Except as stated in 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.

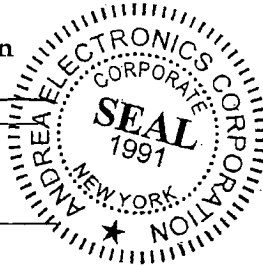
11.10. No Admission. The Parties agree that this Agreement or anything contained herein shall not constitute an admission by Licensee of infringement, validity or enforceability of any of the Asserted Patents.

[REDACTED]

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: [Signature]
Name: Douglas Andrea
Title: C.E.O.
Date: 1/12/16



ASUSTeK Computer Inc.


By: [Signature]
Name: Jerry Shen
Title: C.E.O.
Date: 1/27/16

ASUS Computer International

By: [Signature]
Name: Steve Chang
Title: President
Date: 1/14/16

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 canceling 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



Pat. No.	App. No.	Title	Filing Date	Issue Date
7,319,762	11/482,351	Headset with flashing light emitting diodes	05-Jul-2006	15-Jan-2008
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	



APPENDIX B

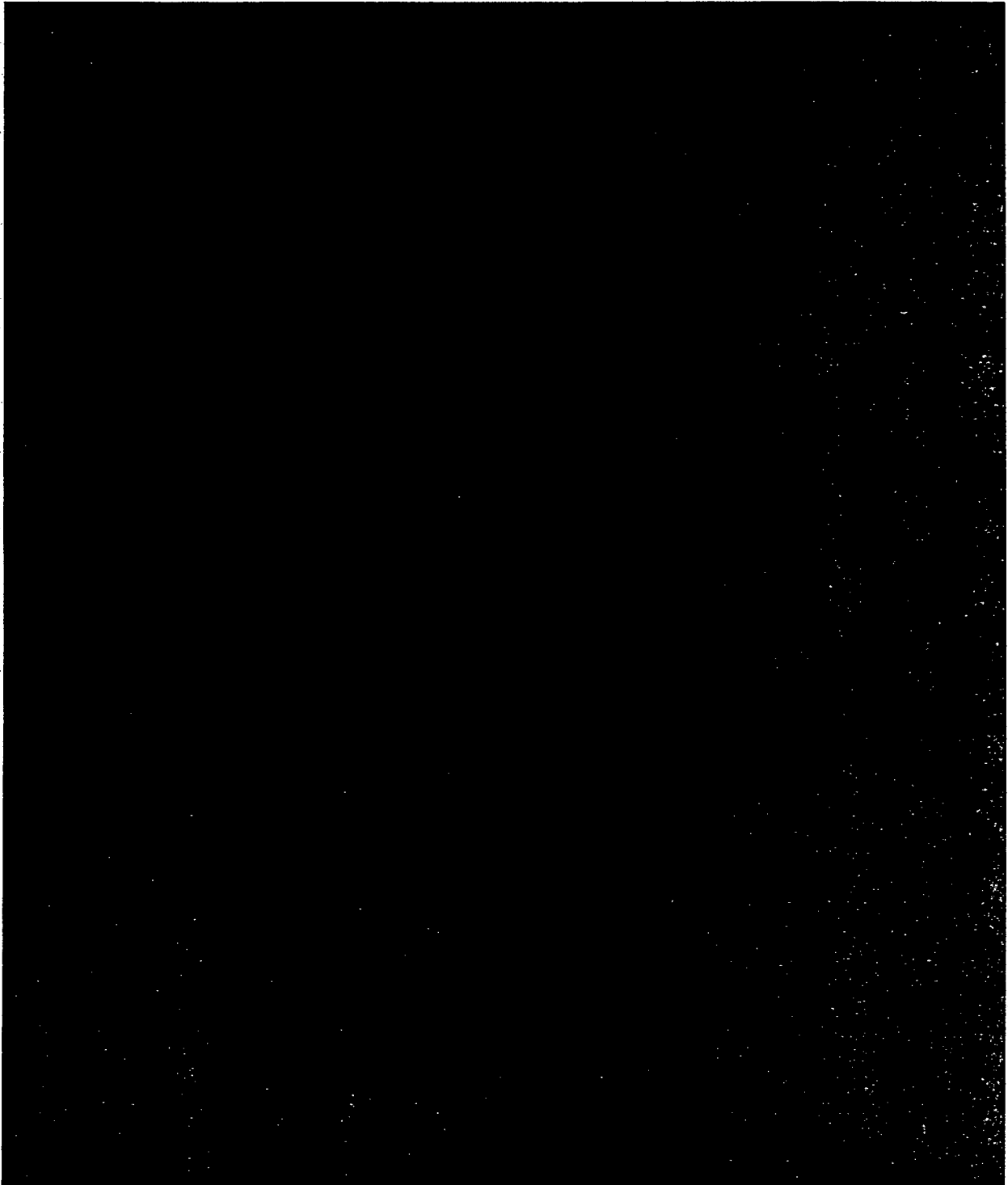


EXHIBIT B2

[REDACTED]

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

ANDREA ELECTRONICS CORPORATION,

Plaintiff,

v.

ASUSTEK COMPUTER INC. AND ASUS
COMPUTER INTERNATIONAL,

Defendants.

CIVIL ACTION

NO. 2:15-cv-00214

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 ASUSTeK Computer Inc. and Asus Computer International (together, "Asus"), 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 Asus shall be dismissed with prejudice; and

(2) All costs and expenses relating to the claims between Andrea and Asus 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/ _____

/s/ _____

[REDACTED]

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*Counsel for Respondents ASUSTeK
Computer Inc. and ASUS Computer
International*

Counsel for Complainant

Andrea Electronics Corp.

[REDACTED]

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

ANDREA ELECTRONICS CORPORATION,

Plaintiff,

v.

ASUSTEK COMPUTER INC. AND ASUS
COMPUTER INTERNATIONAL,

Defendants.

CIVIL ACTION

NO. 2:15-cv-00214

[PROPOSED] ORDER DISMISSING ALL CLAIMS WITH PREJUDICE

Before the Court is Plaintiff Andrea Electronics Corp.'s ("Andrea's") and Defendants ASUSTeK Computer Inc. and Asus Computer International (together, "Asus") 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 Asus in this litigation shall be dismissed with prejudice.

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

IT IS SO ORDERED.

ct

**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. 33** has been served upon the **Commission Investigative Attorney, Lisa Murray,
Esq.**, and the following parties as indicated on **FEB 04 2016**.



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

FOR COMPLAINANTS ANDREA ELECTRONICS CORP.:

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Redwood Shores, CA 94065

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

337-TA-949

FOR RESPONDENTS LENOVO HOLDING CO., INC. & LENOVO (United States) INC.

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**FOR RESPONDENTS TOSHIBA CORPORATION & TOSHIBA AMERICA
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