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# 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. 37: INITIAL DETERMINATION GRANTING JOINT MOTION TO TERMINATE INVESTIGATION WITH RESPECT TO INTERVENOR CONEXANT SYSTEMS, INC.

(March 7, 2016)

### I. INTRODUCTION

On February 19, 2016, Complainant Andrea Electronics, Inc. ("Andrea") and Intervenor Conexant Systems, Inc. ("Conexant") filed a joint motion, pursuant to 19 C.F.R. §§ 210.21(a)(2) and 210.21(b), "to terminate this Investigation as to Conexant and all accused products with enabled Conexant audio processing software" based on a settlement agreement and a patent license agreement (Motion Docket No. 949-073). (*Motion* at 1.) Andrea and Conexant further request that the unredacted versions of the agreements be disclosed only to Andrea and Conexant, the Commission, the Administrative Law Judge, and the Staff. Andrea and Conexant 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 23, 2016, the Commission Investigative Staff filed a response supporting the motion to terminate. No party opposes the present motion to terminate.

### II. DISCUSSION

### A. Applicability of Commission Rules to Intervenors

Commission Rule 210.3 defines terms "used in this part," *i.e.*, in 19 C.F.R. § 210 et seq. For example, the term "Intervenor" is defined as "a person who has been granted leave by the Commission to intervene as a party to an investigation or a related proceeding under this part." 19 C.F.R. § 210.3. The term "Respondent" is defined as "any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act of 1930." *Id.* Thus, pursuant to Rule 210.3, Respondent and Intervenor are distinct entities.

Commission Rule 210.21(a)(2) provides that

[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) (emphasis added). Likewise, Commission Rule 210.21(b)(1) states that

[a]n investigation before the Commission may be terminated as to *one* or more respondents pursuant to section 337(c) of the Tariff Act of 1980 on the basis of a licensing or other settlement agreement.

19 C.F.R. § 210.21(b)(1) (emphasis added).

The present motion seeks to terminate Conexant and all accused products with enabled Conexant audio processing software, pursuant to 19 C.F.R. §§ 210.21(a)(2) and 210.21(b). But Conexant is an Intervenor in this investigation, not a Respondent. Because Conexant is not a Respondent, neither Commission Rule 210.21(a)(2) nor Commission Rules 210.21(b)(1) appear to provide a basis for terminating Conexant, as a party, from this investigation. In fact, I can find no rule that authorizes me to terminate an Intervenor, such as Conexant, from an investigation.

Although Rules 210.21(a)(2) and 210.21(b)(1) do not apply on their face to Intervenors, these Rules have nevertheless been used on at least one occasion to support the termination of an Intervenor from an investigation. Specifically, in *Certain Ground Fault Circuit Interrupters*, the

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ALJ granted a joint motion to terminate an enforcement proceeding as to "Respondent Menard and Intervenor P&S based on settlement agreement" pursuant to 19 C.F.R. § 210.21(a)(2) and 19 C.F.R. § 210.21(b)(1). See Certain Ground Fault Circuit Interrupters, 337-TA-739, Order No. 76 (U.S.I.T.C. Feb. 4, 2013). The Commission determined not to review the ALJ's Order. See id., Comm'n Notice (U.S.I.T.C. March 1, 2013). I also note that applying Commission Rules 210.21(a)(2) and 210.21(b) to intervenors (and requiring them to file copies of settlement agreements) is consistent with Commission rules and Commission jurisprudence because it allows me to consider the effect of the settlement agreement on the public interest. Cf. Certain Portable Electronic Devices and Related Software, Inv. No. 337-TA-797, Order No. 73, 2012 WL 5942617, \*3 (U.S.I.T.C. Mar. 1, 2013) ("[T]he consideration terms of the agreement are fundamental to the Administrative Law Judge's ability to 'make appropriate findings . . . regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers' pursuant to Commission Rule 210.50(b)(2).").

In light of the above, I will review the present motion to terminate Intervenor Conexant as a party to this investigation pursuant to Commission Rules 210.21(a)(2) and 210.21(b)(1). With regard to the joint request to terminate the investigation as to all accused products with enabled Conexant audio processing software, I find that request falls squarely within the language of Rule 210.21(a)(2), because the request seeks to terminate the investigation in part with respect to certain of Respondents' accused products. *See* 19. C.F.R. § 210.21(a)(2).

A motion to terminate on the basis of settlement pursuant to Commission Rule 210.21(a)(2) or 210.21(b)(1) 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). See also 19 C.F.R. § 210.21(a)(2) ("Any party may move at any time to terminate an investigation ... on the basis of a settlement ... as provided in paragraphs (b), (c) and (d) of this section."). 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.* Further, 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).

### B. Compliance with Commission Rules

Andrea and Conexant filed a confidential version of the motion to terminate that includes a confidential version of the Settlement Agreement (Exhibit A1, hereto) and the Patent License Agreement (Exhibit A2, hereto). Additionally, Andrea and Conexant filed a public version of the motion to terminate that includes public versions (*i.e.*, redacted versions) of the Settlement Agreement (Exhibit B1, hereto) and the Patent License Agreement (Exhibit B2, hereto). Andrea and Conexant state that "there are no other agreements, written or oral, express or implied, between Andrea and Conexant 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.

### C. Public Interest

With respect to the public interest, Andrea and Conexant argue that the termination of the investigation as to Conexant 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 3.) The Staff also argues that there are no public interest concerns weighing against termination of the investigation with respect to Conexant. (Staff Response at 4.)

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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 Conexant 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 (U.S.I.T.C. 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.").

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

Andrea and Conexant request that the unredacted confidential versions of the Settlement Agreement and Patent License Agreement be disclosed only to Andrea and Conexant, the Commission, the Administrative Law Judge, and the Staff. I find Andrea and Conexant'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).

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### III. <u>CONCLUSION</u>

Accordingly, for the reasons above, it is my Initial Determination to GRANT the joint motion to terminate (Motion Docket No. 949-072). Accordingly, Conexant is hereby terminated from this investigation. In addition, this investigation is terminated with regard to any of Respondents' accused products that enable Conexant audio processing software.

Further, Andrea and Conexant'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.** 

Thomas B. Pender

Administrative Law Judge

# **EXHIBIT A1**

(Confidential Settlement Agreement - Redacted)

# **EXHIBIT A2**

(Confidential Patent Licensing Agreement - 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 Conexant Systems, Inc., a Delaware corporation having a place of business at 1901 Main Street, Suite 300, Irvine, CA 92614 ("Conexant") (Andrea and Conexant may each be referred to as a "Party" or collectively be referred to as the "Parties").

### RECITALS

WHEREAS, the Parties wish to resolve the litigation pending in the International Trade Commission Investigation No. 337-TA-949 titled Certain Audio Processing Hardware and Software and Products Centaining the Same (the "ITC Investigation") in which Conexant intervened:

WHEREAS, Andrea has granted Conexant 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 Conexant 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 ITC investigation, 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 Conexant, attached as Confidential 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. <u>Dismissals.</u> Subject to the terms and conditions herein the Parties shall file the following:
  - a. Andrea and Conexant shall jointly file a motion to terminate the ITC Investigation substantially in the form set forth in Exhibit B within five (5) days of the Effective Date.
- 2.2. Releases. Upon receipt of payment by Andrea as set forth in Section 3.1 of the License Agreement, Andrea and its Subsidiaries and Conexant, its parent and Conexant's Subsidiaries shall release all claims, counterclaims and/or defenses against each other relating to the Asserted Patents that were brought or could have been brought of any kind and nature whatsoever, including but not limited to any claims in the ITC Investigation, as of the Effective Date.
  - a. With respect to any and all claims released herein, each Party stipulates and agrees that they shall be deemed to have expressly waived any and all provisions, rights and benefits conferred by any law of any country, state or territory, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Each Party acknowledges that the inclusion of such unknown claims in the releases above was separately bargained for and was a key element of this Agreement. Each Party acknowledges that they may hereafter discover facts which are different from or in addition to those that they may now know or believe to be true with respect to any and all claims herein released and agree

that all such unknown claims are nonetheless released and that the releases above shall be and remain effective in all respects even if such different or additional facts are subsequently discovered.

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 aftorneys' 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. <u>Term.</u> The rights granted under this Agreement, if any, shall commence upon the Effective Date.
- 3.2. <u>No Other Obligations</u>. Neither Party shall have any other responsibilities or obligations in connection with actions to enforce or defend the Asserted Patents.
- 3.3. <u>Binding on Successors</u>. 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 shall be delivered by facsimile transmission, electronic mall, 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 Conexant:

Conexant Systems, Inc. 1901 Main Street, Suite 300 Irvine, CA 92614 Attn: 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 California, without regard to its conflict of laws principles.
- 5.2. <u>Jurisdiction</u>. The Parties hereby submit to, and waive any venue objections against, the sole and exclusive jurisdiction of the state and federal courts located in Orange County in the State of California.

## SECTION 6 WARRANTIES; COVENANTS; LIMITATION OF LIABILITY

6.1. <u>Limited Warranty</u>. 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. <u>Duty to Maintain Confidentiality</u>. Either Party may publicly disclose this Agreement, except that the License Agreement, Confidential Exhibit A, may only be disclosed in accordance with the Confidentiality obligations contained therein.

# SECTION 8 MISCELLANEOUS

- 8.1. <u>Counterparts.</u> This Agreement may be executed in counterparts in the English language and each executed document shall be deemed an original thereof.
- 8.2. <u>Entire Agreement: Construction</u>. 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. <u>Modification</u>. No variation or modification of the terms of this Agreement or any walver 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. <u>Severability: Interpretation</u>. 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. Walver. 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. <u>No Admission</u>. The Parties agree that this Agreement or anything contained herein shall not constitute an admission by Conexant 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

Ву:	Alla	
Name:	Douglus AN	DREA
Title:	CEO	•
Date: _	2/16/16	
Conexa	int Systems, Inc.	

Name: Denis Regimbal

Title: President and CEO

Date: 2-16-16

### 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 ("Andrea" or "Licensor"); and Conexant Systems, Inc., a Delaware corporation having a place of business at 1901 Main Street, Suite 300, Irvine, CA 92614 ("Conexant" 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 license under the Andrea Patents as well as certain other rights and covenants; and

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. "Affiliate" means any Entity that (a) is a Subsidiary of such party, or (b) Controls or is under Control of such party. For avoidance of doubt, Affiliates shall include any company or legal entity that is spun-off from a Party (that remains in control or owned and controlled by such Party) after the Effective Date or created solely as a change in corporate structure so long as such company or legal entity (a) is a Subsidiary of such Party, or (b) controls or is under common control of such Party.
- 1.2. "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 <u>APPENDIX A</u> attached hereto are assigned to Licensor as of the Effective Date and are included in the definition of Andrea Patents.

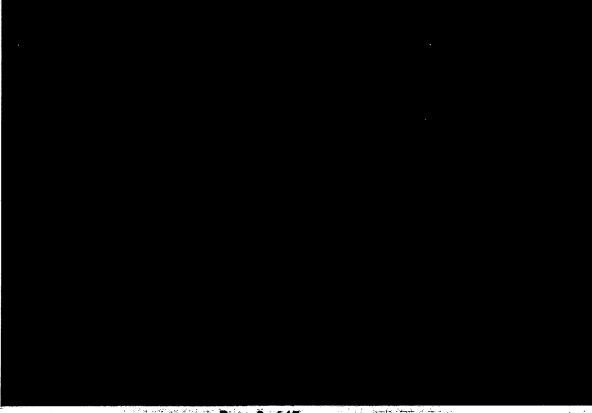
- 1.3. "Asserted Patents" means all patents asserted in the ITC Investigation, namely, the following US Patents: 5,825,898; 6,049,607; 6,363,345; 6,483,923; and 6,377,637.
- 1.4. "Control" (including its correlative meanings, "Controlled" and "Controlling") means the power to direct or cause the direction 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. "Conexant Audio Software" means any software, firmware, source code, object code and/or any other computer executable code (developed or created by or exclusively for Conexant) capable of performing any audio processing operations on a general purpose processor, audio processor, and/or any other hardware processing circuit, chip or device, in any form (including without limitation as a stand-alone audio processing program, application, code segment, module, or sub-routine) and on any medium (including without limitation on a computer readable medium such as optical disk, magnetic disk, solid-state memory, wireless memory, and/or downloadable content) or through any delivery method (including without limitation pre-loading on any host device, transfer through any OEMs/ODMs or any other third party, downloading from the Internet, cloud server, applications store, and/or any other file storage system or service). Conexant Audio Software does not include any Third Party Audio Effect Module(s).
- 1.6. "Conexant Audio Hardware" means any and all hardware, including without limitation any semiconductor device, chip, die, circuitry, hardware module, system or device, made by or for Conexant, capable of performing audio processing operations when programmed with audio processing software.

  Conexant Audio Hardware does not include any Third Party Audio Effect Module(s).

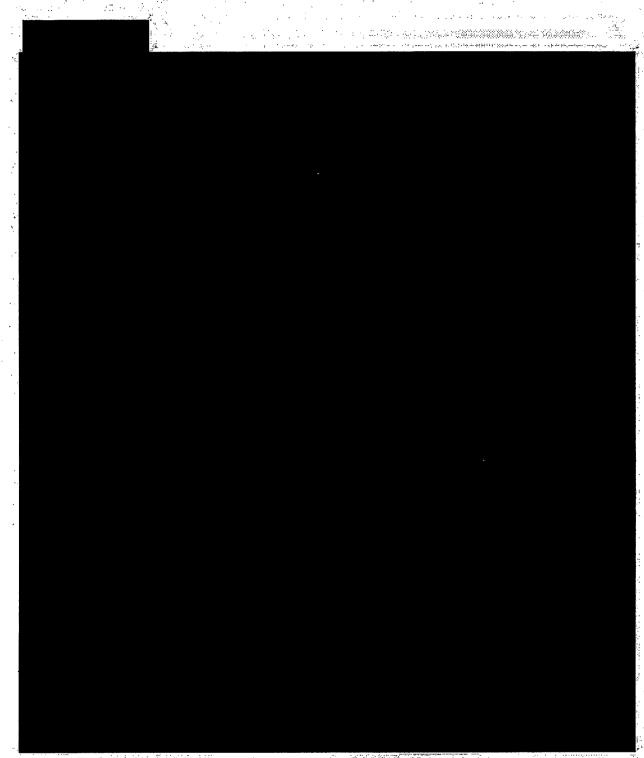
- 1.7. "Conexant Audio Driver" means any Conexant software driver provided or distributed for use with Conexant Audio Hardware.
- 1.8. "Conexant Licensed Products" means all Conexant Audio Software, Conexant Audio Hardware, and Conexant Audio Driver (excluding Third Party Audio Effect Module(s)), alone and/or in combination.
- 1.9. "Third Party Audio Effect Module" means any third party audio effect software created by a third party and provided to Conexant for the purpose of incorporation into a Conexant Audio Driver, where such Third Party Audio Effect Module may be encompassed or covered by any of the Andrea Patents.
- 1.10. "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.
- 1.11. "Subsidiary" shall mean any Entity directly or indirectly Controlled by a party.

SECTION 2: GRANT OF LICENSES, RELEASES, AND COVENANTS

2.1 Grant of License:



Page 3 of 17



2.4 Covenant Not to Challenge Andrea Patents. Subject to Licensor's full compliance with its obligations under this Agreement, Licensee and its Subsidiaries.

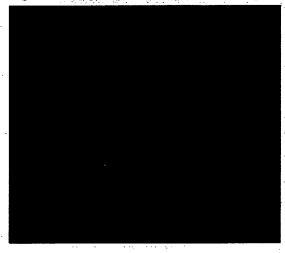
covenant that they will not initiate a direct challenge, or knowingly assist others in challenging, the validity and/or enforceability of any of the Andrea Patents, in whole or in part, including, but not limited to, through the filing of declaratory judgment actions or reexaminations, post-grant, or inter partes review proceedings. The term "assist" means with respect to a party that challenges the validity and/or enforceability of any of the Andrea Patents: (a) funding such party to challenge the validity and/or enforceability of one or more of the Andrea Patents, or any part thereof; (b) providing such party with any analysis of any of the Andrea Patents, or any portion thereof; or (c) providing any prior art or any analysis of any prior art to any of the Andrea Patents to such party.

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

### SECTION 3 PAYMENT

3.1. <u>Payment.</u> 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 thirty (30) calendar business days after the Effective Date of this Agreement (or the next business day if the 30<sup>th</sup> day is not a business day) 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.



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

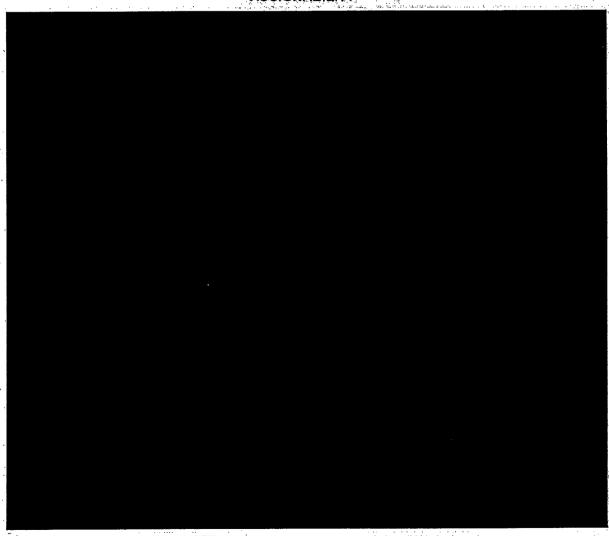
- 4.1. <u>Term.</u> Subject to timely payment of the Payment by Licensee, and unless earlier terminated under Sections 4.2, 4.3 or 4.5, the rights granted under this Agreement shall commence upon the Effective Date and shall expire upon the expiration of the last-to-expire of the Andrea Patents (the "<u>Term</u>").
- 4:2. <u>Termination by Licensee</u>. 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. <u>Termination by Licensor</u>. 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 Andrea Patent. Should Licensee of 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 Andrea Patents, Licensee shall have thirty (30) days after receiving notice from Andrea to cure such breach. If Licensee fails to cure the breach, 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 Andrea Patents. Termination under this Section 4.5 shall not entitle Licensee to a refund or return of any portion of the Payment.

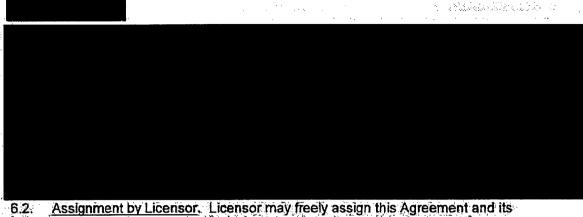
# SECTION 5 ENFORCEMENT or DEFENSE

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 Andrea Patents.

### SECTION 6 ASSIGNABILITY



Page 7 of 17



- 6.2. Assignment by Licensor. Licensor may freely assign this Agreement and its rights hereunder, either expressly or through operation of law, but only on the express condition that the licenses, releases, obligations and covenants encumber and run with the Andrea Patents. Licensor shall impose all of the obligations owed by Licensor to Conexant under this Agreement on any successor or assignee of Licensor in ownership or control of any of the Andrea Patents. Any such successor or assignee shall acknowledge its obligations to Conexant under this Agreement before such assignment may become effective.
- 6.3. <u>Binding on Successors</u>. This Agreement shall be binding upon and inure to the benefit of the Parties, permitted successors and assignees, and successors and assignees of the Andrea Patents. Notwithstanding the preceding, it is understood that no assignment will release either Party or their Subsidiaries or its permitted successors or assignees, from any of its obligations hereunder. This Agreement and all rights, licenses, releases and covenants herein shall be binding upon and inure to the benefit of the permitted successors and assignees of either Party.

### 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:

Conexant Systems, Inc. 1901 Main St., Suite 300 Irvine, CA 92614 Attn: General Counsel

# SECTION 8 GOVERNING LAW AND JURISDICTION



### 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 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. Licensor further represents and warrants that it owns the Andrea Patents and has the full right to grant the licenses and covenants herein, regardless of any rights in the Andrea Patents held by AND34 Funding LLC and/or Fortress Investment-Group. Notwithstanding anything in this Agreement to the contrary, upon timely notice from Licensee of a breach of this Section 9.1 by Licensor, and failure to cure such breach within thirty (30) days of the notice, Licensee is entitled to rescind this Agreement in its entirety and receive full 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 ANDREA 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 ANDREA 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 CONEXANT LICENSED 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 ANDREA 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 Affiliates, attorneys, accountants and investors who are bound by confidentiality provisions, unless prior written consent is obtained from the other Party. Notwithstanding the foregoing, either Party may disclose this Agreement, including its terms and conditions, pursuant to any competent court, regulatory authority or governmental agency orders, regulations and/or regulrements; provided however, that in the event of such disclosure, 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, but Licensee may not disclose the Payment amount set forth in Section 3.1. Furthermore, either Party may, subject to the terms of 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.

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, or in conjunction with an assertion of claim against Licensee or Conexant License. Products or a Third Party Audio Effect Module; 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 and/or court order.

### 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. <u>Modification</u>. 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. <u>Waiver</u>. 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. 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. <u>Bankruptcy</u>. 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 licensee 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 Andrea Patents.



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

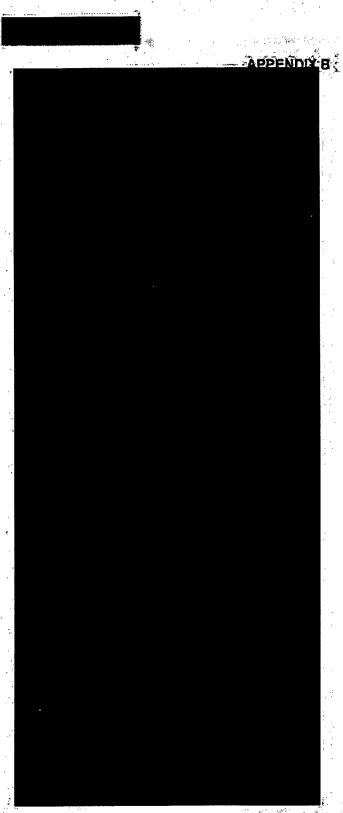
### **Andrea Electronics Corporation**

Ву:	- Administration of the second	<u></u>
Name:	-	
Title:		
Date:		
Conexant S	ystems, Inc.	
Ву:		
Name:		
Title:	· ·	
Date:		

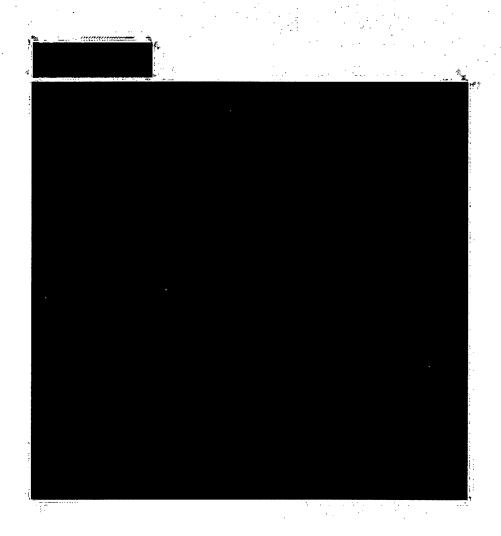
### APPENDIX A

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	L7-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	



Page 16 of 17



Page 17 of 17

### EXHIBIT B

# Before the Honorable Thomas B. Pender Administrative Law Judge

In the Matter of

CERTAIN AUDIO PROCESSING HARDWARE AND SOFTWARE AND PRODUCTS CONTAINING SAME Inv. No. 337-TA-949

# COMPLAINANT ANDREA ELECTRONICS CORP. AND INTERVENOR CONEXANT SYSTEMS, INC.'S JOINT MOTION TO TERMINATE THE INVESTIGATION WITH RESPECT TO CONEXANT

Pursuant to 19 C.F.R. §§ 210.21(a)(2) and 210.21(b). Complainant Andrea Electronics Corporation ("Andrea") and Intervenor Conexant Systems, Inc. ("Conexant") hereby jointly move to terminate this Investigation as to Conexant and all accused products with enabled Conexant audio processing software pursuant to the provisions of 19 C.F.R. § 210.21(b) and based upon the Settlement and Patent License Agreements submitted herewith (Confidential Exhibit A, accompanying this motion), and request that the Administrative Law Judge issue an Initial Determination terminating the Investigation with respect to Conexant and all accused products with enabled Conexant audio processing software.

Pursuant to Ground Rule 5.1.2, Andrea and Conexant certify that they notified the Commission Investigative Attorney ("Staff"), Respondents ASUS Computer International, ASUSTEK Computer Inc., Dell Inc., Hewlett Packard Co., Lenovo Holding Co., Inc., Lenovo (United States) Inc., Toshiba Corp., and Toshiba America Information Systems, Inc. (collectively "Respondents"), and Intervenor Waves Audio Ltd., of the substance of this motion at least two days prior to filing. The Staff, Respondents, and Intervenor will not oppose the present motion.

Commission Rule 210.21(a)(2) provides that "[a]ny party may move at any time 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." See also Commission Rule 210.21(b)(1) ("An investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement.").

The Patent License Agreement between Andrea and Conexant, which is an exhibit to the Settlement Agreement, contains confidential business information within the meaning of 19 C.F.R. § 210.5. Accordingly, Andrea and Conexant request that the Settlement Agreement, attached as Confidential Exhibit A be treated as Confidential Business Information under the Protective Order in this Investigation (Order No. 1).

Additionally, Andrea and Conexant request that the unreducted version of the Settlement Agreement attached hereto as Confidential Exhibit A be disclosed only to Andrea and Conexant, the Commission, the Administrative Law Judge, and the Staff. A version with the confidential financial terms, closing conditions, and other terms not relevant to the other parties, which will be provided to Respondents and Intervenor with such terms reducted, is attached hereto as Confidential Exhibit B.

This confidential treatment requested by Andrea and Conexant is appropriate and consistent with Commission precedent, which supports withholding settlement terms of one party from other parties, and is further consistent with the public interest which favors settlement. 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 parties 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).

Finally, a public version of the Settlement Agreement is also attached as Exhibit C.

There are no other agreements, written or oral, express or implied, between Andrea and

Conexant concerning the subject matter of this Investigation.

Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the parties, and termination based on a settlement agreement is routinely granted. See, e.g., Certain Wireless Headsets, Inv. No. 337-TA-943, Order No. 10 at 3 (May 19, 2015) ("[T]ermination of [respondent] is in the public interest, as public and private resources will be conserved."); Certain Windshield Wipers & Components Thereof, Inv. No. 337-TA-928/937, Order No. 24 at 3 (Jun. 5, 2015); Certain Set-Top Boxes, Gateways, Bridges, & Adapters & Components Thereof, Inv. No. 337-TA-915, Order No. 17 at 4 (Oct. 7, 2014); Certain Cases for Portable Elec. Devices, Inv. No. 337-TA-861/867, Order No. 10 at 2-3 (Apr. 30, 2013).

Andrea and Conexant submit that termination of this investigation as to Conexant and all accused products with enabled Conexant audio processing software will not adversely affect the public interest because it 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. Id.

For the foregoing reasons, Complainant Andrea and Intervenor Conexant respectfully request that the Administrative Law Judge issue an Initial Determination terminating this Investigation with respect to Conexant and all accused products with enabled Conexant audio-processing software.

Dated:

15/

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Tuhin Ganguly
David J. Shaw
Kelly E. Rose
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Counsel for Complainant Andrea Electronics Corp. /s/

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Counsel for Intervenor Conexant Systems, Inc.

## EXHIBIT B2

#### 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 ("Andrea" or "Licensor"); and Conexant Systems, Inc., a Delaware corporation having a place of business at 1901 Main Street, Suite 300, Irvine, CA 92614 ("Conexant" 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 license under the Andrea Patents as well as certain other rights and covenants; and

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. "Affiliate" means any Entity that (a) is a Subsidiary of such party, or (b) Controls or is under Control of such party. For avoidance of doubt, Affiliates shall include any company or legal entity that is spun-off from a Party (that remains in control or owned and controlled by such Party) after the Effective Date or created solely as a change in corporate structure so long as such company or legal entity (a) is a Subsidiary of such Party, or (b) controls or is under common control of such Party.
- 1.2. "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.

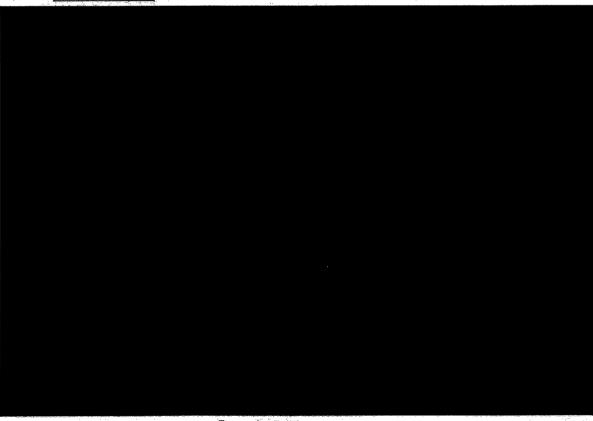
The United States patents and patent applications listed in <u>APPENDIX A</u> attached hereto are assigned to Licensor as of the Effective Date and are included in the definition of Andrea Patents.

- 1.3. "Asserted Patents" means all patents asserted in the ITC Investigation, namely, the following US Patents: 5,825,898; 6,049,607; 6,363,345; 6,483,923; and 6,377,637.
- 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. "Conexant Audio Software" means any software, firmware, source code, object code and/or any other computer executable code (developed or created by or exclusively for Conexant) capable of performing any audio processing operations on a general purpose processor, audio processor, and/or any other hardware processing circuit, chip or device, in any form (including without limitation as a stand-alone audio processing program, application, code segment, module, or sub-routine) and on any medium (including without limitation on a computer readable medium such as optical disk, magnetic disk, solid-state memory, wireless memory, and/or downloadable content) or through any delivery method (including without limitation pre-loading on any host device, transfer through any OEMs/ODMs or any other third party, downloading from the Internet, cloud server, applications store, and/or any other file storage system or service). Conexant Audio Software does not include any Third Party Audio Effect Module(s).
- 1.6. "Conexant Audio Hardware" means any and all hardware, including without limitation any semiconductor device, chip, die, circuitry, hardware module, system or device, made by or for Conexant, capable of performing audio processing operations when programmed with audio processing software. Conexant Audio Hardware does not include any Third Party Audio Effect Module(s).

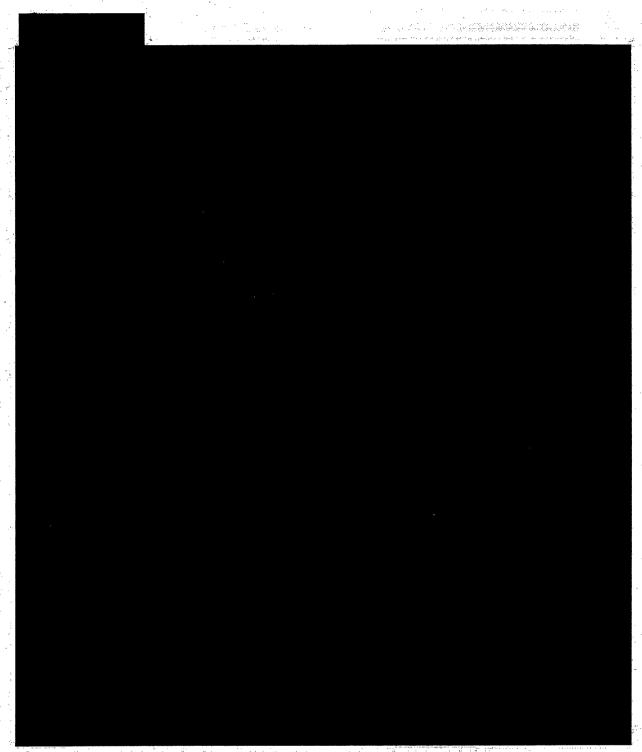
- 1.7. "Conexant Audio Driver" means any Conexant software driver provided or distributed for use with Conexant Audio Hardware.
- 1.8. "Conexant Licensed Products" means all Conexant Audio Software, Conexant Audio Hardware, and Conexant Audio Driver (excluding Third Party Audio Effect Module(s)), alone and/or in combination.
- 1.9. "Third Party Audio Effect Module" means any third party audio effect software created by a third party and provided to Conexant for the purpose of incorporation into a Conexant Audio Driver, where such Third Party Audio Effect Module may be encompassed or covered by any of the Andrea Patents.
- 1.10. "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.
- 1.11. "Subsidiary" shall mean any Entity directly or indirectly Controlled by a party.

SECTION 2: GRANT OF LICENSES, RELEASES, AND COVENANTS

2.1 Grant of License.



Page 3 of 17



2.4 <u>Covenant Not to Challenge Andrea Patents</u>. Subject to Licensor's full compliance with its obligations under this Agreement, Licensee and its Subsidiaries

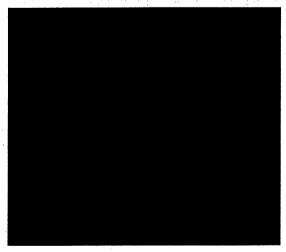
covenant that they will not initiate a direct challenge, or knowingly assist others in challenging, the validity and/or enforceability of any of the Andrea Patents, in whole or in part, including, but not limited to, through the filing of declaratory judgment actions or reexaminations, post-grant, or inter partes review proceedings. The term "assist" means with respect to a party that challenges the validity and/or enforceability of any of the Andrea Patents: (a) funding such party to challenge the validity and/or enforceability of one or more of the Andrea Patents, or any part thereof; (b) providing such party with any analysis of any of the Andrea Patents, or any portion thereof; or (c) providing any prior art or any analysis of any prior art to any of the Andrea Patents to such party.

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

### SECTION 3 PAYMENT

3.1. <u>Payment</u>. 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 thirty (30) calendar business days after the Effective Date of this Agreement (or the next business day if the 30<sup>th</sup> day is not a business day) 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.



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

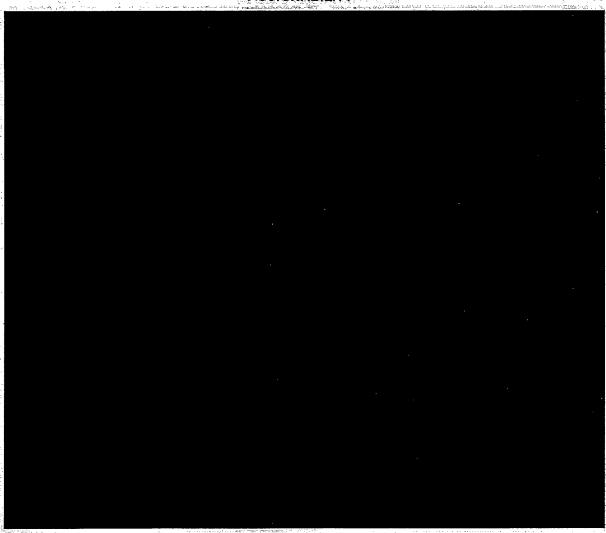
- 4.1. <u>Term.</u> Subject to timely payment of the Payment by Licensee, and unless earlier terminated under Sections 4.2, 4.3 or 4.5, the rights granted under this Agreement shall commence upon the Effective Date and shall expire upon the expiration of the last-to-expire of the Andrea Patents (the <u>Term</u>).
- 4:2. <u>Termination by Licensee</u>. This Agreement is terminable by Licensee upon thirty (30) days written notice to Licenson. 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. <u>Termination by Licensor</u>. 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 Andrea 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 Andrea Patents, Licensee shall have thirty (30) days after receiving notice from Andrea to cure such breach. If Licensee fails to cure the breach, 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 Andrea Patents. Termination under this Section 4.5 shall not entitle Licensee to a refund or return of any portion of the Payment.

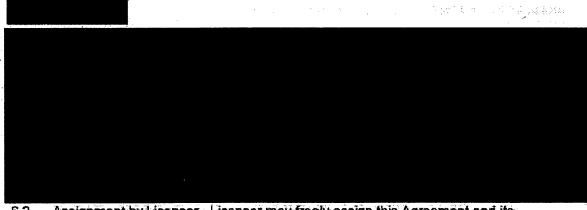
### SECTION 5 ENFORCEMENT OF DEFENSE

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 Andrea Patents.





Page 7 of 17



- 6.2. Assignment by Licensor. Licensor may freely assign this Agreement and its rights hereunder, either expressly or through operation of law, but only on the express condition that the licenses, releases, obligations and covenants encumber and run with the Andrea Patents. Licensor shall impose all of the obligations owed by Licensor to Conexant under this Agreement on any successor or assignee of Licensor in ownership or control of any of the Andrea Patents. Any such successor or assignee shall acknowledge its obligations to Conexant under this Agreement before such assignment may become effective.
- 6.3. <u>Binding on Successors</u>. This Agreement shall be binding upon and inure to the benefit of the Parties, permitted successors and assignees, and successors and assignees of the Andrea Patents. Notwithstanding the preceding, it is understood that no assignment will release either Party or their Subsidiaries or its permitted successors or assignees, from any of its obligations hereunder. This Agreement and all rights, licenses, releases and covenants herein shall be binding upon and inure to the benefit of the permitted successors and assignees of either Party.

#### 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 Licenson

Andrea Electronics Corporation 620 Johnson Ave., Suite 18 Bohemia, New York 11716 For Licensee:

Conexant Systems, Inc. 1901 Main St., Suite 300 Irvine, CA 92614 Attn: General Counsel

### SECTION 8 GOVERNING LAW AND JURISDICTION



### 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 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. Licensor further represents and warrants that it owns the Andrea Patents and has the full right to grant the licenses and covenants herein, regardless of any rights in the Andrea Patents held by AND34 Funding LLC and/or Fortress Investment-Group. Notwithstanding anything in this Agreement to the contrary, upon timely notice from Licensee of a breach of this Section 9.1 by Licensor, and failure to cure such breach within thirty (30) days of the notice, Licensee is entitled to rescind this Agreement in its entirety and receive full 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 ANDREA 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 ANDREA 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 CONEXANT LICENSED 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 ANDREA 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 Affiliates, attorneys, accountants and investors who are bound by confidentiality provisions, unless prior written consent is obtained from the other Party. Notwithstanding the foregoing, either Party may disclose this Agreement, including its terms and conditions, pursuant to any competent court, regulatory authority or governmental agency orders, regulations and/or requirements; provided however, that in the event of such disclosure, 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, but Licensee may not disclose the Payment amount set forth in Section 3.1. Furthermore, either Party may, subject to the terms of 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.

10.2. <u>Disclosure Related to Legal Process</u>. Notwithstanding Section 10.1, a Party may produce this Agreement in response to a subpoena, discovery request or court order, or in conjunction with an assertion of claim against Licensee or Conexant License. Products or a Third Party Audio Effect Module; 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 and/or court order.

### 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. <u>Modification</u>. 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. <u>Waiver</u>. 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. 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. <u>Agency</u>. 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. <u>Bankruptcy</u>. 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 Andrea Patents.

#### CONFIDENTIAL

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: Valle

Name: Douglas ANDUELA

Date: 2/16/16

Conexant Systems, Inc.

Name: Denis Regimbal

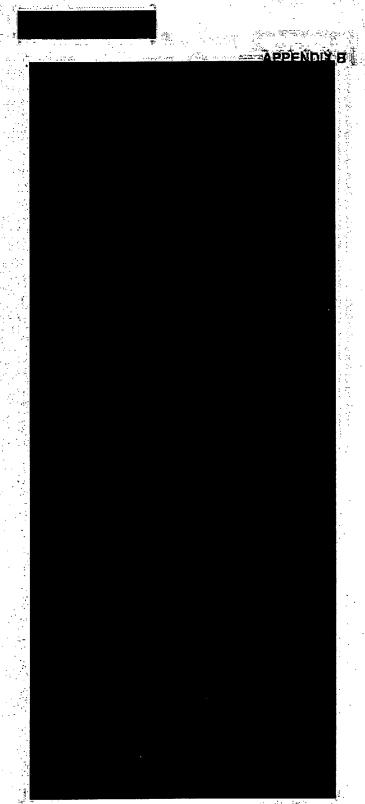
Title: President and CEO

Date: 2-16-16

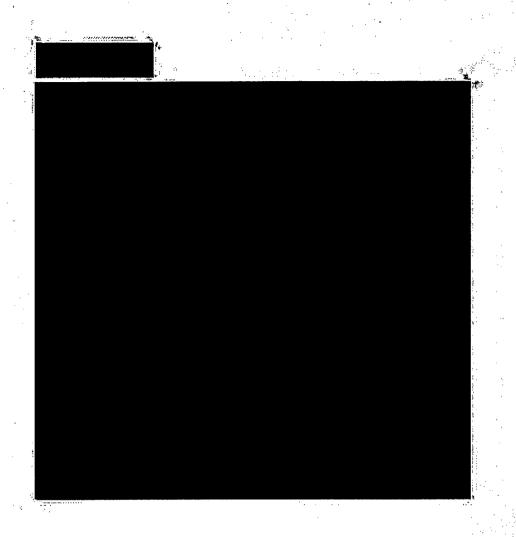
### APPENDIX A

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	



Page 16 of 17



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

### **CERTIFICATE OF SERVICE**

T. I. D. D. Harry handler contifer that the attached	DIDLIC INTELL DETERMINATION		
I, Lisa R. Barton, hereby certify that the attached <b>ORDER NO. 37</b> has been served upon the <b>Com</b>	mission Investigative Attorney, Lisa Murr MAR -7 2016		
Esq., and the following parties as indicated on	ми - ; 2010		
	The state of the s		
	0/125		
	Lisa R. Barton, Secretary		
	U.S. International Trade Commission		
	500 E Street, SW, Room 112A		
	Washington, DC 20436		
FOR COMPLAINANTS ANDREA ELECTRO	ONICS CORP.:		
Goutam Patnaik, Esq.	( )Via Hand Delivery		
PEPPER HAMILTON LLP	(×)Via Express Delivery		
600 Fourteenth Street, NW	(>) Via First Class Mail		
Washington, DC 20005	( )Other:		
	ANGEDICA CORDODATION		
FOR RESPONDENT ACER INC. & ACER	AMERICA CORPORATION:		
Craig Kaufman, Esq.	( )Via Hand Delivery		
TECHKNOWLEDGE LAW GROUP LLP	(X)Via Express Delivery		
100 Marine Parkway, Suite 200	Via First Class Mail		
Redwood Shores, CA 94065	( )Other:		
FOR RESPONDENT DELL INC.			
Scott Denko, Esq.	( )Via Hand Delivery		
DENKO COBURN LAUFF LLP	(★)Via Express Delivery		
3811 Bee Caves Road, Suite 204	( )Via First Class Mail		
Austin, TX 78746	( )Other:		
FOR RESPONDENT HEWLETT PACKARI	) CO.		
Eric S. Namrow, Esq.	( )Via Hand Delivery		
MORGAN, LEWIS & BOCKIUS LLP	⟨★Via Express Delivery		
1111 Pennsylvania Avenue N.W.	( )Via First Class Mail		
Washington, DC 20004	( )Other:		

## 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.

Fred Williams, Esq. <b>AKIN GUMP STRAUSS HAUER &amp; FELD LLP</b> 600 Congress Avenue, Suite 1350  Austin, TX 78701	<ul><li>( )Via Hand Delivery</li><li>(★)Via Express Delivery</li><li>( )Via First Class Mail</li><li>( )Other:</li></ul>	
FOR RESPONDENTS TOSHIBA CORPORATION & INFORMATION SYSTEMS, INC.	TOSHIBA AMERICA	
Douglas F. Stewart, Esq.  BRACEWELL & GIULIANI LLP  701 Fifth Avenue, Suite 6200  Seattle, WA 98104	<ul><li>( )Via Hand Delivery</li><li>(★)Via Express Delivery</li><li>( )Via First Class Mail</li><li>( )Other:</li></ul>	
FOR RESPONDENT REALTEK SEMICONDUCTOR INC. & ASUS COMPUTER INTERNATIONAL	CORP., ASUSTeK COMPUTEI	
Li Chen, Esq.  CHEN MALIN LLP  1700 Pacific Avenue, Suite 2400  Dallas, TX 75201	<ul><li>( )Via Hand Delivery</li><li>( )Via Express Delivery</li><li>( )Via First Class Mail</li><li>( )Other:</li></ul>	
FOR NON-PARTY CONEXANT SYSTEMS, INC.		
James B. Altman, Esq.  FOSTER, MURPHY, ALTMAN & NICKEL, PC 1899 L Street NW, Suite 1150 Washington, DC 20036	<ul><li>( )Via Hand Delivery</li><li>(★)Via Express Delivery</li><li>( )Via First Class Mail</li><li>( )Other:</li></ul>	
FOR NON-PARTY WAVES AUDIO LTD.		
J. Scott Denko, Esq. <b>DENKO COBURN LAUFF LLP</b> 3811 Bee Caves Road, Suite 204  Austin, TX 78746	<ul><li>( )Via Hand Delivery</li><li>(★)Via Express Delivery</li><li>( )Via First Class Mail</li><li>( )Other:</li></ul>	