

*Public Version*

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN WIRELESS DEVICES, INCLUDING  
MOBILE PHONES AND TABLETS III**

**Inv. No. 337-TA-942**

**ORDER NO. 9: INITIAL DETERMINATION GRANTING JOINT MOTION TO  
TERMINATE THE INVESTIGATION BASED ON A SETTLEMENT  
AGREEMENT**

(May 14, 2015)

**I. BACKGROUND**

On May 13, 2015 Complainant Pragmatius Mobile, LLC (“Pragmatius”) and Respondents ASUSTeK Computer, Inc.; ASUS Computer International; and ASUS Technology Pte. Ltd. (collectively, “ASUS”) moved to terminate this Investigation under 19 C.F.R. §§ 210.21(a)(2) and 210.21(b)(1) based on a settlement agreement. (Motion Docket No. 942-008) The Commission Investigative Staff (“Staff”) is not a party in this investigation.

**II. STANDARDS OF LAW**

Commission Rule 210.21(a)(2) states 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 . . . as provided in paragraphs (b), (c), and (d) of this section.” 19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(b)(1) provides that in order for an investigation to be terminated as to a respondent on the basis of a licensing or other settlement agreement, the motion for termination must include: (1) copies of the “licensing or other settlement agreement,” including both a public and a confidential version if necessary; (2) any supplemental

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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).

### **III. COMPLIANCE WITH COMMISSION RULES**

In accordance with Commission Rules, a confidential version of the motion to terminate was filed that includes a confidential version of the Parties’ Settlement Agreement (Exhibit A, hereto). Additionally, a public version of the motion to terminate was filed that includes a redacted version (*i.e.*, public version) of the Parties’ Settlement Agreement (Exhibit B, hereto). Consistent with 19 C.F.R. § 210.21(b)(1), the parties state that the Settlement Agreement represents the entirety of the agreement between Pragmatius and ASUS and that “there are no other agreements, written or oral, express or implied between Pragmatius and ASUS concerning the subject matter of this investigation.” (Memo. at 2.) The Settlement Agreement fully resolves all claims that Pragmatius has asserted against ASUS in this investigation.

### **IV. PUBLIC INTEREST**

Commission Rule 210.50(b)(2) provides:

Regarding terminations by settlement agreement, consent order, or arbitration agreement under § 210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument. . . . Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination 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.

19 CFR § 210.50(b)(2). Pragmatius and ASUS submit that terminating this investigation will not have an adverse effect on the public health and welfare and/or competitive conditions in the United States. (Memo. at 2.)

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I have reviewed the pleadings filed in connection with this motion for termination and do not find any information indicating that termination of this Investigation on the basis of 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 termination of this investigation is in the public interest, which favors settlement to avoid needless litigation and to conserve public resources.

**V. CONCLUSION**

Accordingly, it is my Initial Determination to GRANT Motion Docket No. 942-008. This Initial Determination, along with supporting documentation, is hereby certified to the Commission. This Initial Determination terminates this investigation in its entirety.

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

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# **EXHIBIT A**

**(Confidential Settlement Agreement - Redacted)**

*Public Version*

# **EXHIBIT B**

LA-1501209  
MAY. 04 2015  
Legal Affairs Center



**PATENT LICENSE AGREEMENT**

This Patent License Agreement ("Agreement") is effective as of \_\_\_\_\_, 2015 (the "Effective Date"), by and among Pragmatum Mobile LLC, a Virginia limited liability company having a place of business at 601 King Street, Alexandria, Virginia ("Pragmatum Mobile"); and ASUSTeK Computer Inc., a corporation organized and existing under the laws of Taiwan having a place of business at 15, Li-De Rd., Beitou, Taipei 112, Taiwan (R.O.C.), ASUS Computer International, a private corporation organized and existing under the laws of the State of California, with a principal place of business located at 800 Corporate Way, Fremont, California 94539; and ASUS Technology Pte. Ltd., organized and existing under the laws of Singapore, with a principal place of business located at 8, Burn Road, #11-16, Singapore (collectively, "Company").

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**RECITALS**

WHEREAS, Company desires to obtain a license to the Pragmatum Mobile's patents; and

WHEREAS, Pragmatum Mobile and Company desire to settle and dismiss all outstanding litigation between the Parties; and

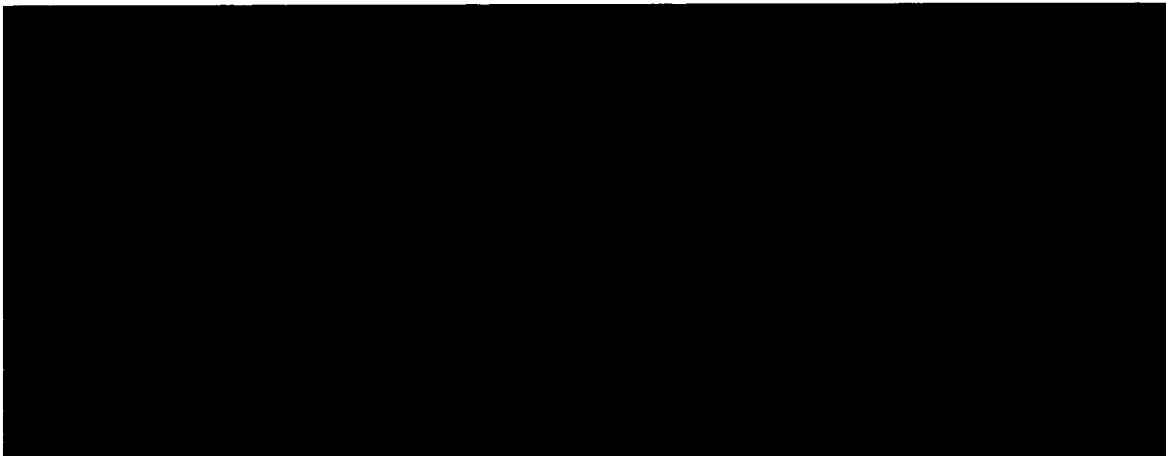
THEREFORE, in consideration of the covenants contained in this Patent License Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pragmatum Mobile and Company agree as follows:

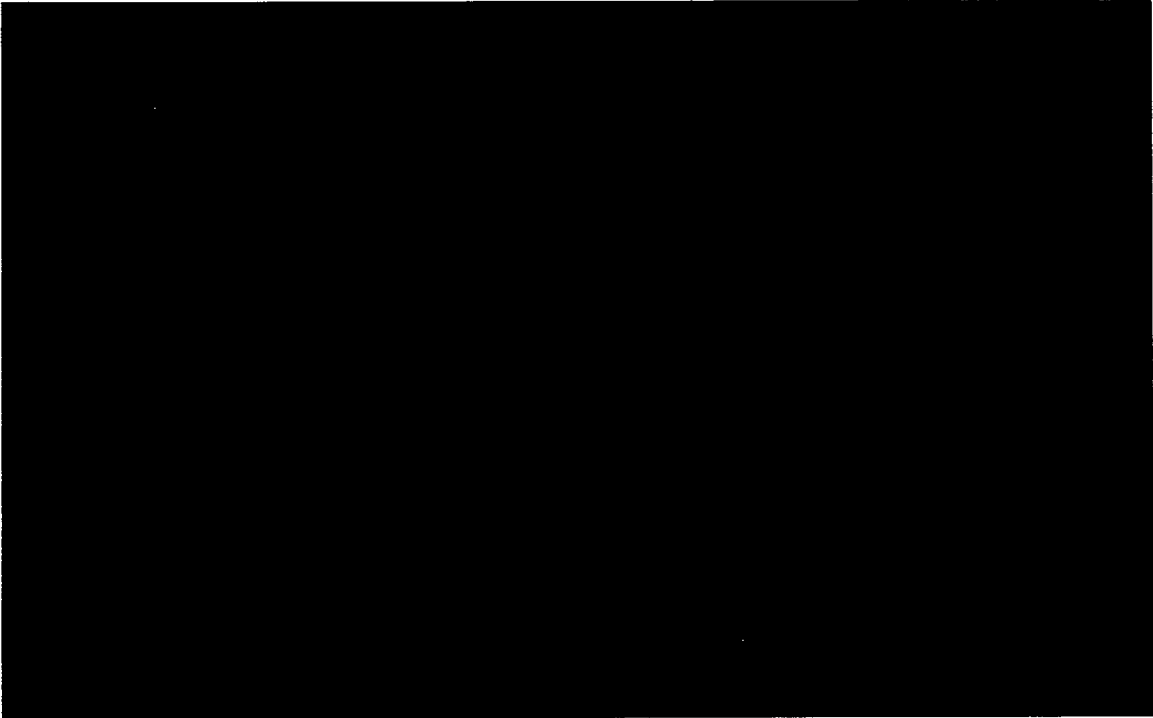
**AGREEMENT**

**SECTION 1**

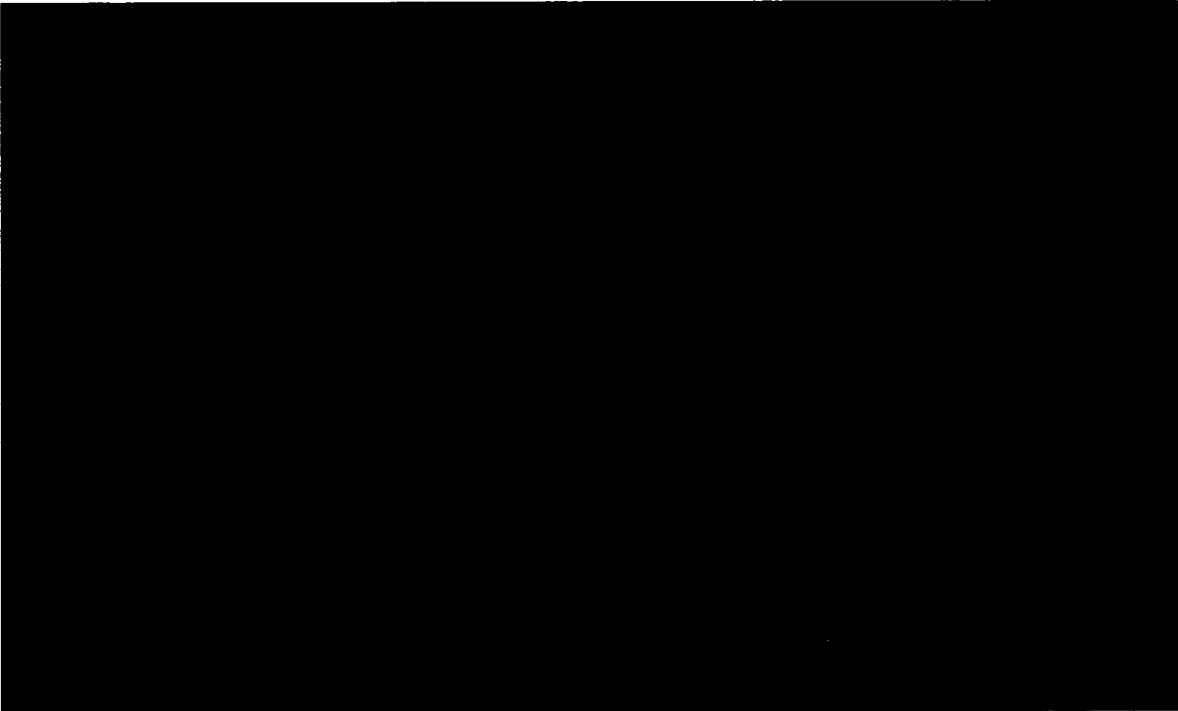
**DEFINITIONS**

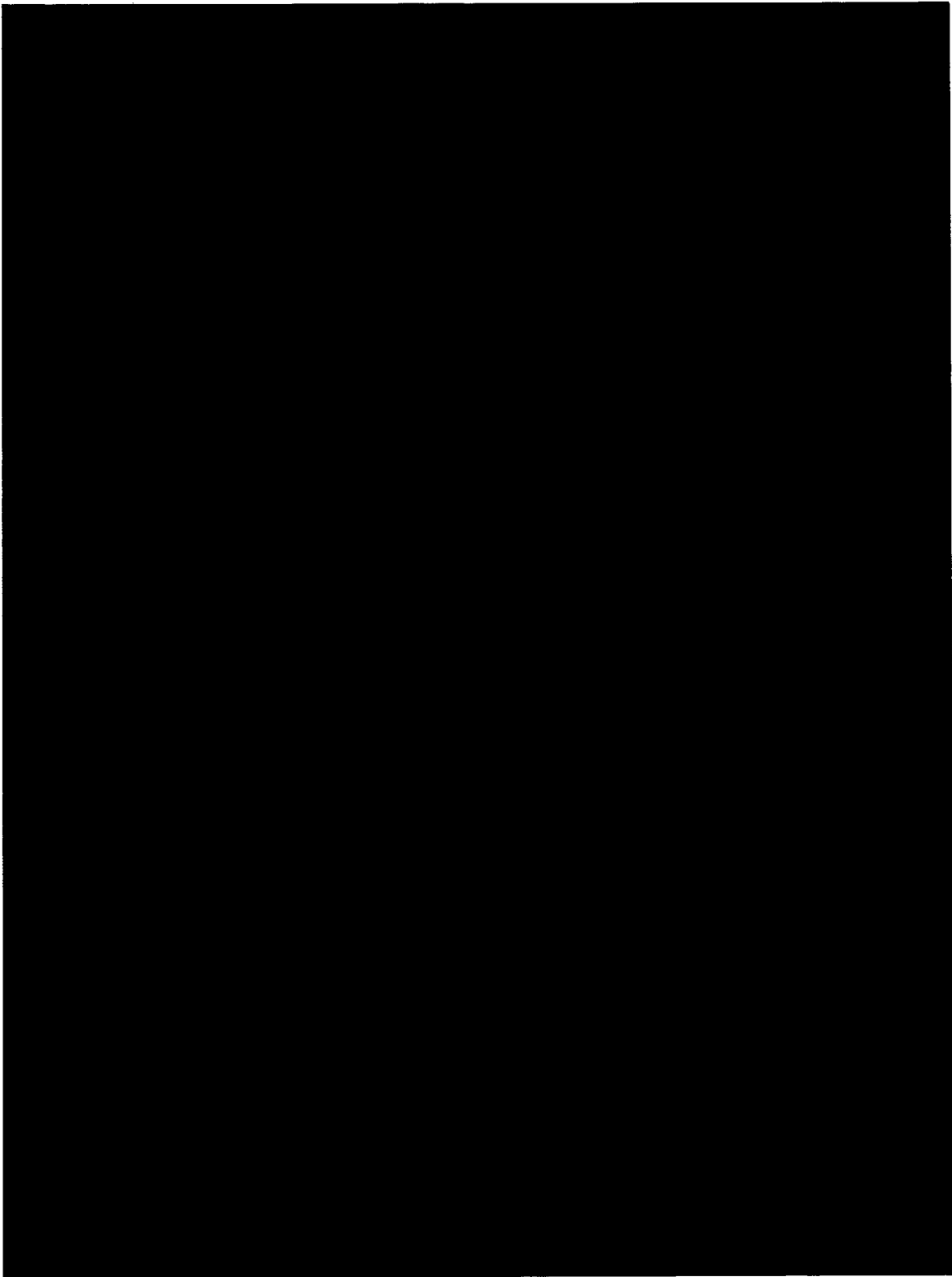
As used in this Agreement, the following terms shall have the following meanings:



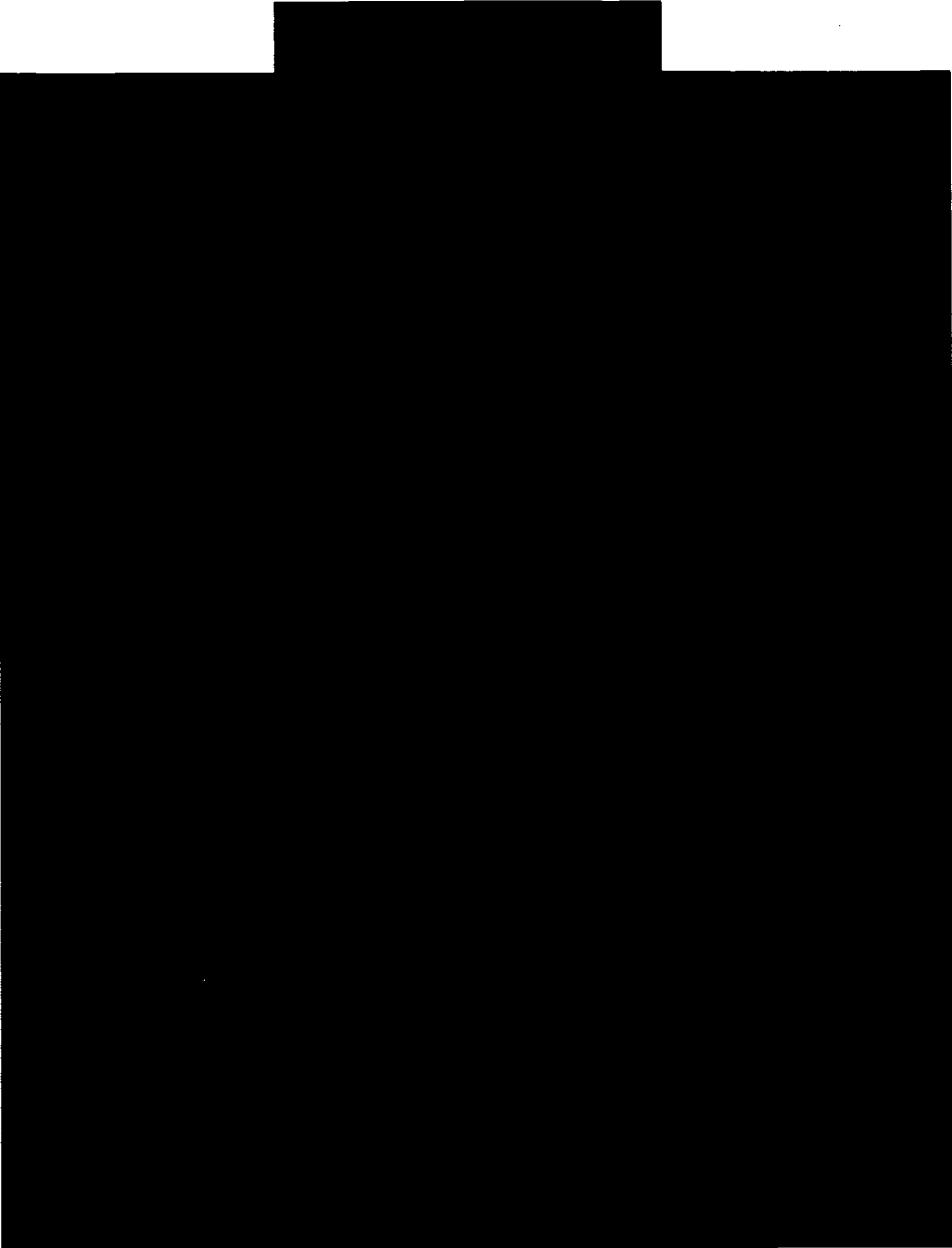


**SECTION 2  
LICENSE GRANT AND RELEASE**



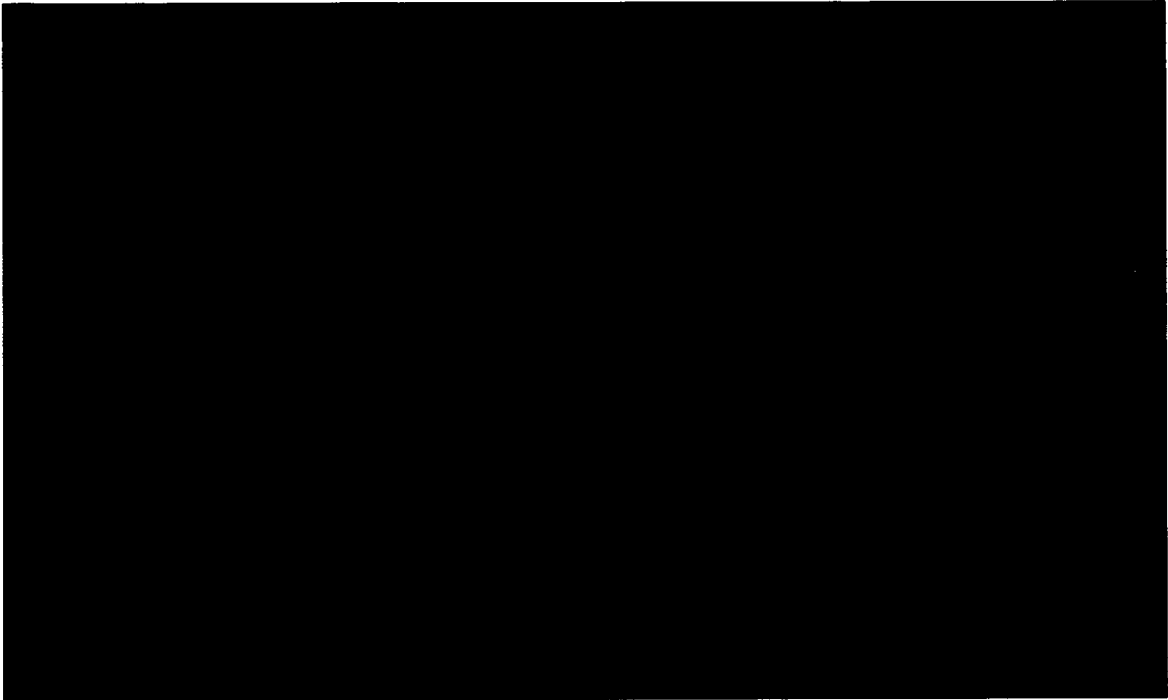




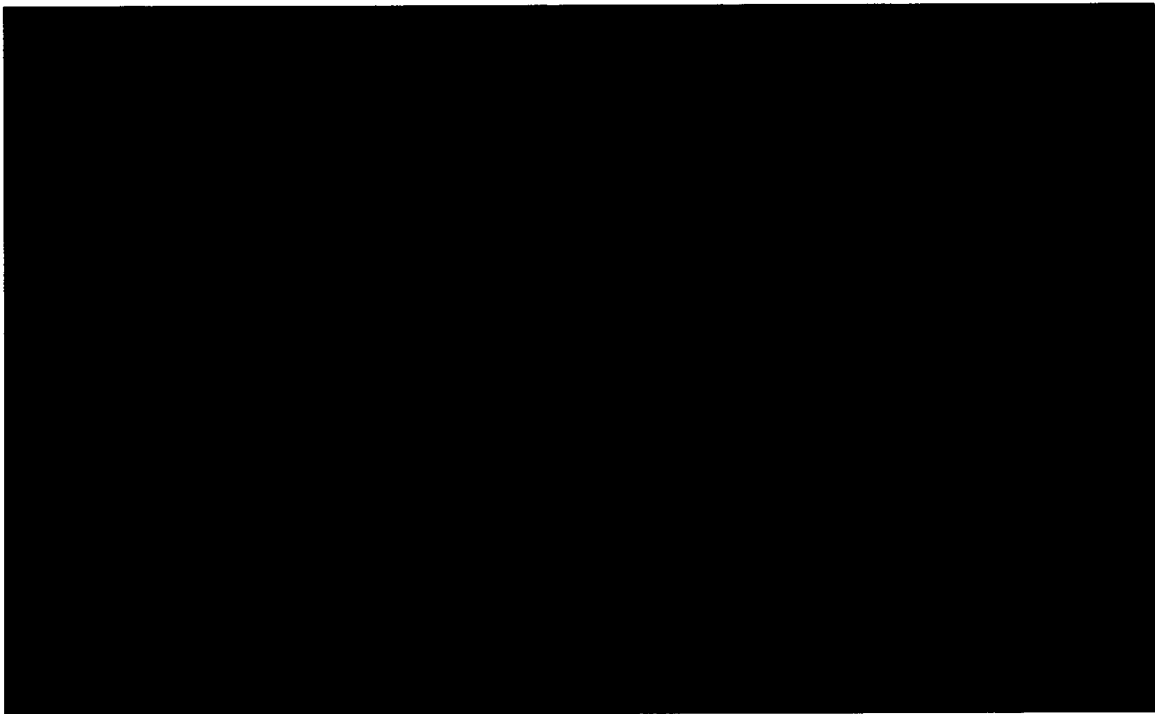


**SECTION 3**





**SECTION 4**  
**TERM AND TERMINATION**



[REDACTED]

[REDACTED]

SECTION 5

[REDACTED]

[REDACTED]

SECTION 6

[REDACTED]

[REDACTED]

SECTION 7

NOTICE

7.1 Any notice or communication required or permitted to be given by either Party hereunder shall be in written form and shall be considered to be sufficiently given if mailed by registered or certified mail or transmitted by overnight courier, addressed to the parties hereto as follows:

[REDACTED]

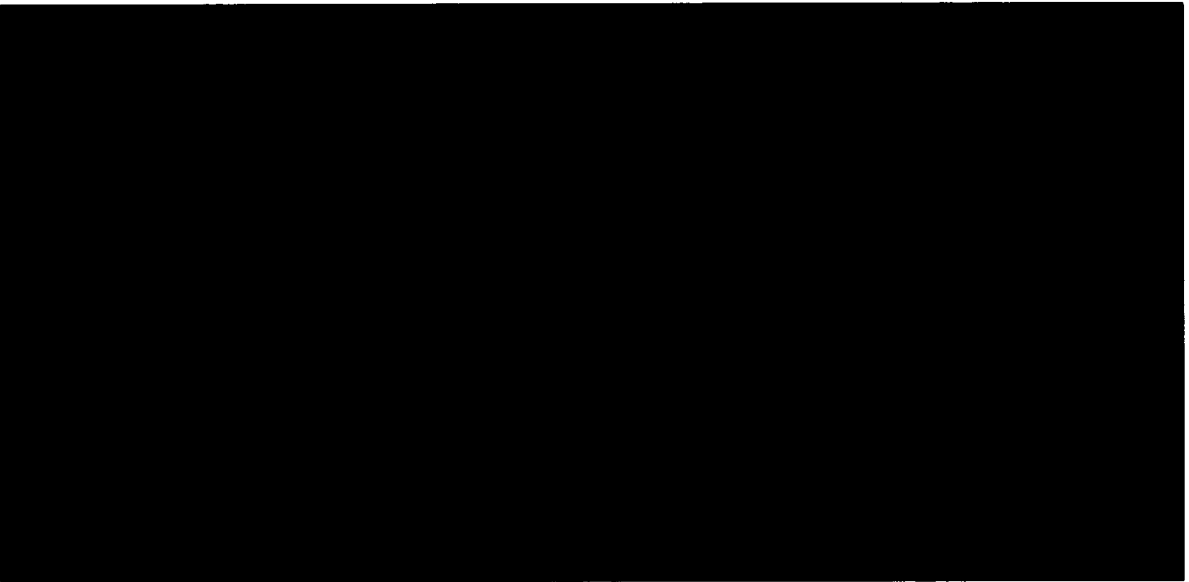
To: Pragmatus Mobile LLC  
601 King Street  
Alexandria, Virginia 22314  
Attention: William Marino and Anthony Grillo

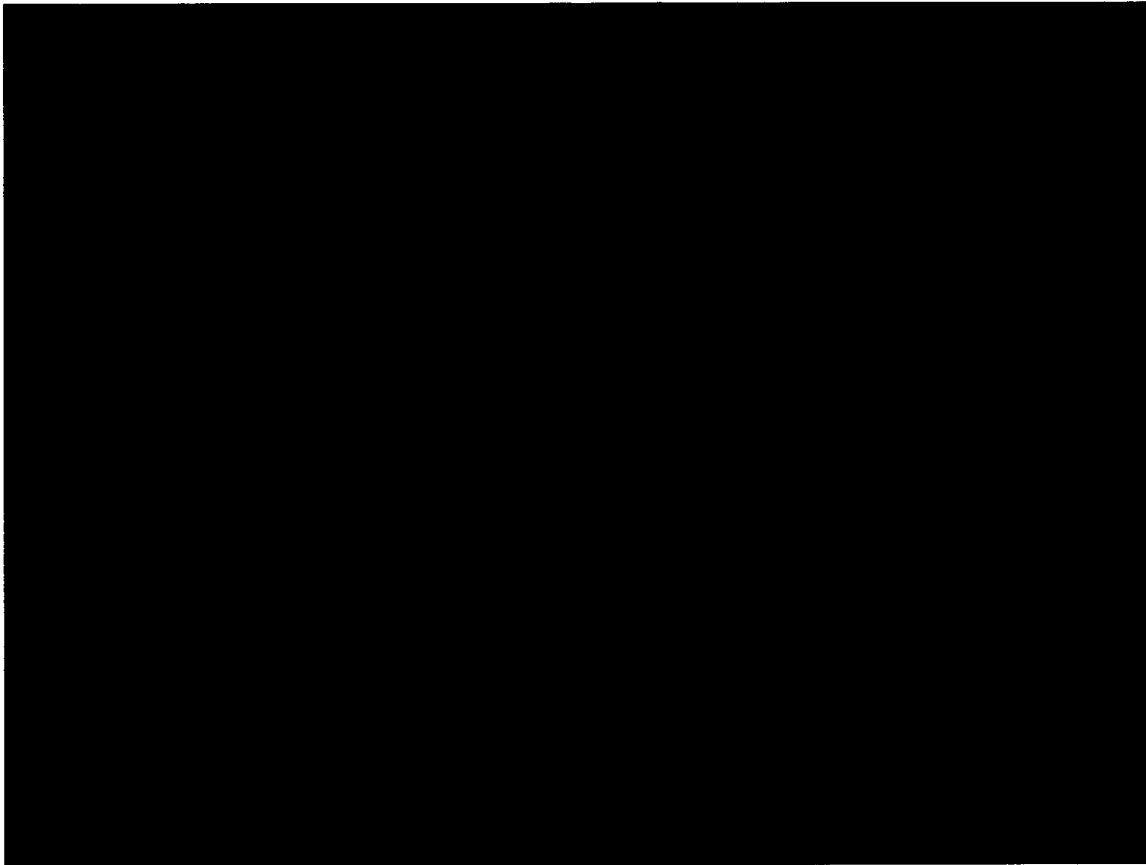
To Company: ASUSTeK Computer Inc.  
15, Li-De Rd., Beitou, Taipei 112, Taiwan (R.O.C.)  
Attention: Legal Compliance Team

**SECTION 8**  
**CONTROLLING LAW AND JURISDICTION**



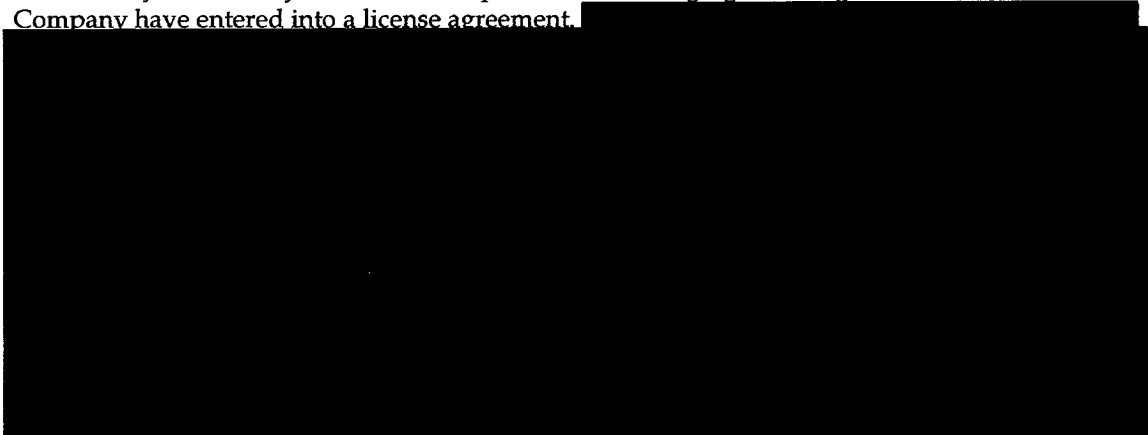
**SECTION 9**  
**WARRANTIES, PARTIES' RESPONSIBILITIES, AND LIABILITY**





**SECTION 10  
CONFIDENTIALITY**

10.1 The terms of this Agreement, but not its existence, are confidential and not to be disclosed by either Party other than in a public acknowledging that Pragmatus Mobile and Company have entered into a license agreement.

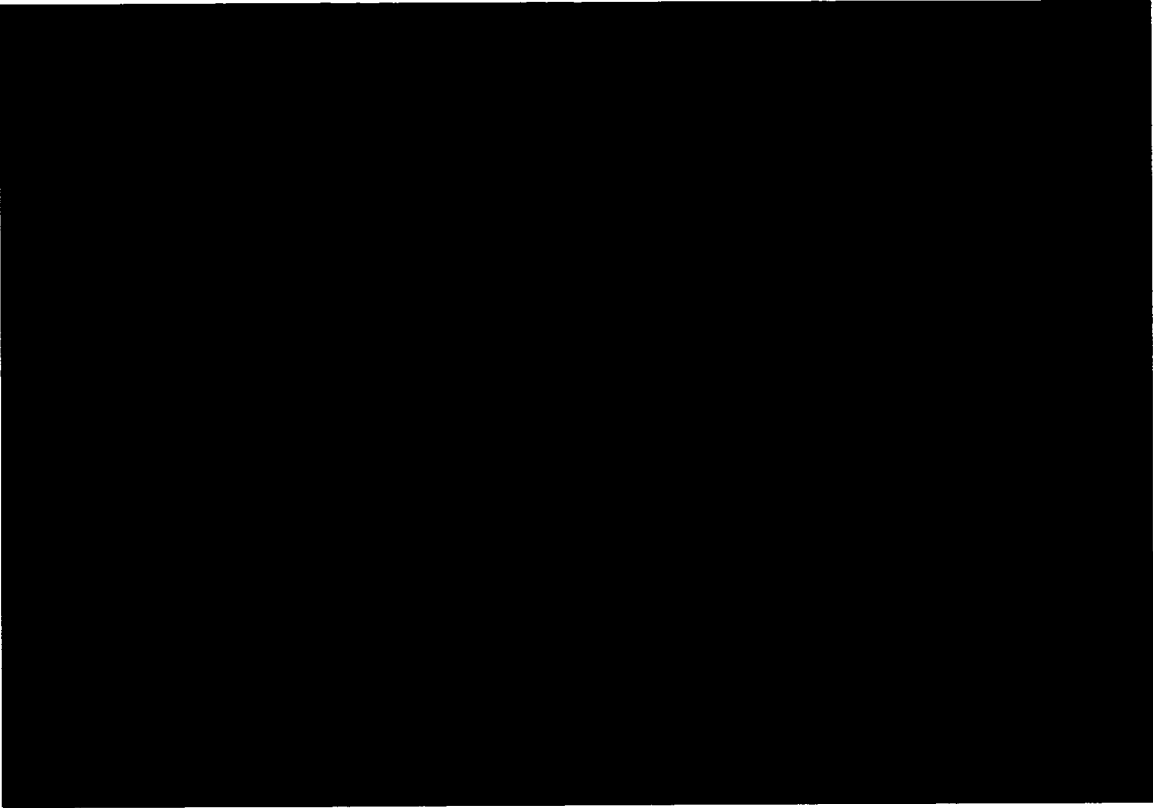




10.3 The Parties agree that they may disclose that they have entered into a License Agreement for the license of the Pragmatus Mobile Patents provided that such disclosure specifically excludes any disclosure of the terms and/or conditions of the License Agreement.

**SECTION 11  
MISCELLANEOUS**





IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate by duly authorized officers effective on the date and year first written above.

**PRAGMATUS MOBILE LLC**

By: WAM  
Name: William A. Marino  
Title: CEO

Dated: 4/13/15

**ASUSTeK Computer Inc.**

By: Jerry Shen  
Name: Jerry Shen  
Title: C.E.O.

Dated: 5/4/15

**ASUS Computer International**

By: Steve Chang  
Name: Steve Chang  
Title: President

Dated: 4/16/15

**ASUS Technology Pte. Ltd.**

By: \_\_\_\_\_  
Name: Rex Lee  
Title: Authorized Representative

Dated: \_\_\_\_\_



Exhibit A

Delaware Form Dismissal

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PRAGMATUS MOBILE, LLC,

Plaintiff,

v.

ASUSTEK COMPUTER, INC. ET AL.

Defendants.

C.A. No. 1:2014-cv-00437

**STIPULATION AND [PROPOSED] ORDER OF DISMISSAL WITH  
PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a), Plaintiff Pragmatus Mobile, LLC, ("Pragmatus") and ASUSTek Computer Inc. and Asus Computer International ("ASUS"), having entered into a settlement and license agreement and each having executed the agreement, hereby stipulate to:

- (1) Dismissal with prejudice of all of Pragmatus' claims against ASUS in this action; and
- (2) Dismissal with prejudice of all of ASUS's counterclaims in this action.

Each party will bear its own costs and attorneys' fees.





IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated:

Respectfully submitted,



Exhibit A  
 ITC Form Dismissal  
 UNITED STATES INTERNATIONAL TRADE COMMISSION  
 WASHINGTON, D.C.

Before the Honorable Thomas B. Pender  
 Administrative Law Judge

In the Matter of	)	
	)	
CERTAIN WIRELESS DEVICES,	)	Inv. No. 337-TA-942
INCLUDING MOBILE PHONES AND	)	
TABLETS III	)	

**JOINT MOTION TO TERMINATE INVESTIGATION NO. 337-TA-942  
ON THE BASIS OF A SETTLEMENT AGREEMENT**

Complainant Pragmatius Mobile, LLC (“Pragmatius”) and Respondents ASUSTeK Computer, Inc.; ASUS Computer International; and ASUS Technology Pte. Ltd. (collectively, “ASUS”) (with Pragmatius and ASUS collectively, the “Moving Parties”) respectfully request that Investigation No. 337-TA-942 of the United States International Trade Commission be terminated pursuant to the provisions of 19 U.S.C. § 1337(c) and 19 C.F.R. § 210.21(a)(2) and § 210.21(b) in view of a Patent License Agreement (“Agreement”) between Pragmatius and ASUS.

Commission Rule 210.21(a)(2) states in pertinent part 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). Commission Rule 210.21(b) further specifies that in order for an investigation to be terminated on the basis of a settlement, the motion for termination must include: (1) a copy of the licensing or other settlement agreement, including both a public and a confidential version if necessary, (2) any supplemental agreements, and (3) a statement that there are no other agreements,

[REDACTED]

written or oral, express or implied, between the parties concerning the parties concerning the subject matter of the investigation. 19 C.F.R. § 210.21(b).

The Agreement has been executed by Pragmatius and ASUS and is fully effective as between them. The Agreement completely resolves the disputes between Pragmatius and ASUS in this Investigation and includes the patent asserted against ASUS, *i.e.*, U.S. Pat. No. 8,466,795. The Agreement and its respective exhibits contain Confidential Business Information within the meaning of 19 C.F.R. § 201.6. The Moving Parties therefore request that the Agreement, attached hereto as Exhibit 1-Confidential, be treated as Confidential Business Information under the Protective Order in this Investigation. A public version of the Agreement is being filed with the public version of this Joint Motion to Terminate ("Motion") as Exhibit 1-Public.

Pragmatius and ASUS aver that the Agreement reflects the entire and only agreement between Pragmatius and ASUS regarding the subject matter of this Investigation. There are no other agreements, written or oral, express or implied, between Pragmatius and ASUS regarding the subject matter of this Investigation.

The Administrative Law Judge, in ruling on a motion to terminate an investigation based on a settlement agreement:

shall consider and make appropriate findings in the initial determination 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.

19 C.F.R. § 210.50(b)(2).

Pragmatius and ASUS respectfully submit that termination of this Investigation pursuant to the Agreement will not have any adverse effect on the public health and welfare and/or competitive conditions in the United States. Further, the public interest favors settlement to avoid unnecessary litigation and to conserve public and private resources. *See, e.g., Certain*



*Semiconductor Chips with Minimized Chip Package Size & Products Containing Same (III)*, Inv. No. 337-TA-630, Order No. 25, at 4 (Sept. 4, 2008) (“the termination of an investigation as to a respondent, such as that proposed by the motion, is generally in the public interest”); *Certain Compact Disc and DVD Holders*, Inv. No. 337-TA-482, Order No. 11, at 3 (March 7, 2003) (same).

For the reasons set forth above, Pragmatus and ASUS respectfully request that the Administrative Law Judge issue an initial determination terminating Investigation No. 337-TA-942 in its entirety in accordance with the provisions of 19 U.S.C. § 1337(c) and 19 C.F.R. § 210.21(b) based on the Patent License Agreement.

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Contract: Patent License Agreement Number: LA-1501209

**Asus Technology Pte. Ltd.**

By: *Lee I Chang*

Name: Lee, I Chang

Title: Authorized Representative

Date: 4/22/15

Contract

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC

Before the Honorable Thomas B. Pender  
Administrative Law Judge

In the Matter of

CERTAIN WIRELESS DEVICES,  
INCLUDING MOBILE PHONES AND  
TABLETS III

Inv. No. 337-TA-942

**CERTIFICATE OF SERVICE**

It is hereby certified that the above JOINT MOTION TO TERMINATE  
INVESTIGATION NO. 337-TA-942 ON THE BASIS OF A SETTLEMENT AGREEMENT  
(PUBLIC) was served on May 13, 2015 as follows:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436	Via EDIS Via Overnight Courier (2 copies)
The Honorable Thomas B. Pender Administrative Law Judge U.S. International Trade Commission 500 E Street, SW, Room 317 Washington, DC 20436  Gregory.Moldafsky@usitc.gov	Via Overnight Courier (2 copies)  Via Email
<b><u>For Complainant Pragmatus Mobile, LLC:</u></b> Dmitriy S. Andreyev Flagship IP, P.C. 82 Broad Street, #314 Boston, MA 02110 dandreyev@flagshipip.com	Via Email

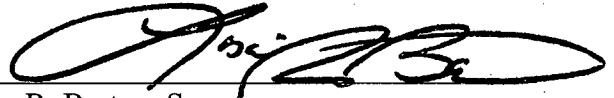
*/s/ T. Spence Chubb*  
\_\_\_\_\_  
T. Spence Chubb

**IN THE MATTER OF CERTAIN WIRELESS DEVICES  
INCLUDING MOBILE PHONES AND TABLETS III**

337-TA-942

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 09 INITIAL DETERMINATION** has been served upon the following parties via first class mail and air mail where necessary on     MAY 14 2015    



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

**FOR COMPLAINANT PRAGMATUS:**

Dmitriy S. Andreyev  
**Flagship IP, P.C.**  
82 Broad Street #314  
Boston, MA 02110

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

**FOR RESPONDENTS ASUSTeK COMPUTER, INC., ASUS COMPUTER INTERNATIONAL, INC. & ASUS TECHNOLOGY PTE. LTD.**

Julie S. Turner, Esq.  
**TURNER BOYD, LLP**  
702 Marshall Street, Suite 640  
Redwood City, CA 94063

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