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October 6, 2011

## VIA HAND DELIVERY

James R. Holbein  
Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

## PUBLIC VERSION

**Re: In the Matter of Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software, Inv. No. 337-TA-724 -- Request for Confidential Treatment of Reply Memorandum of Points and Authorities in Support of Motion to Intervene and Terminate**

Dear Secretary Holbein:

Pursuant to Commission Rules 210.15 and 210.19, Advanced Micro Devices, Inc. (“AMD”), ATI Technologies ULC, and ATI International SRL (collectively “ATI”), respectfully file the attached (a) Motion For Leave To File A Reply In Support Of Their Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation, (b) proposed Reply Memorandum Of Points And Authorities In Support Of Advanced Micro Devices, Inc., ATI Technologies ULC, And ATI International SRL’s Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of The Investigation, with exhibits, and (c) a proposed order.

In accordance with Commission Rules 201.6(b) and 210.5(e)(2), AMD and ATI request that confidential treatment be accorded the business information contained in the motion and proposed reply. Pursuant to paragraphs 2 and 15 of the Protective Order issued in this investigation, AMD and ATI are suppliers of confidential business information and such information shall be treated in accordance with the terms of the Protective Order (Order No. 1). AMD and ATI’s motion and proposed reply are clearly and prominently marked on their faces with notices of confidential business information, in accordance with paragraph 2(a) of the Protective Order. AMD and ATI’s confidential business information is in brackets, and a public version of AMD and ATI’s reply also will be submitted, pursuant to Commission Rule 201.6 and 201.8(d).

James R. Holbein  
October 6, 2011  
Page 2

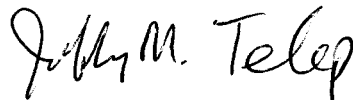
The information for which AMD and ATI seek confidential treatment is proprietary commercial information not otherwise publicly available. Specifically, the reply contains proprietary commercial information concerning [ ]].

The information described above qualifies as confidential business information pursuant to Commission Rule 201.6(a) because:

1. it is not publicly available;
2. unauthorized disclosure of such information could cause substantial harm to the competitive position of AMD and ATI; and
3. the disclosure of which could impair the Commission's ability to obtain information necessary to perform its statutory function.

Please do not hesitate to contact me should you have any questions pertaining to this request.

Very truly yours,



Jeffrey D. Mills  
Jeffrey M. Telep  
Taryn K. Williams  
*Counsel for Advanced Micro Devices, Inc.,  
ATI Technologies ULC and ATI  
International SRL*

Enclosures

**United States International Trade Commission**

**Investigation No. 337-TA-724**

**In the Matter of Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software**

**CERTIFICATE OF SERVICE**

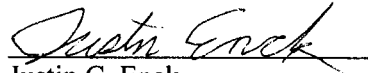
The undersigned certifies that, on October 6, 2011, he caused the **public versions of (1) AMD And ATI's Request For Confidential Treatment, (2) Motion For Leave To File A Reply In Support Of Their Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation, (3) Proposed Reply Memorandum Of Points And Authorities In Support Of Advanced Micro Devices, Inc., ATI Technologies ULC, And ATI International SRL's Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of The Investigation, with Exhibits, And (4) A Proposed Order** to be served upon the following parties as indicated below:

The Honorable James R. Holbein Secretary U.S. International Trade Commission 500 E Street S.W., Room 112 Washington, D.C. 20436	<input type="checkbox"/> Original and Twelve Copies - Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Filing
The Honorable E. James Gildea Administrative Law Judge U.S. International Trade Commission 500 E Street S.W., Suite 317-N Washington, D.C. 20436	Two Copies - Via Hand Delivery
Kecia J. Reynolds, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Suite 401-A Washington, D.C. 20436	<input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Electronic Service
<b><i>On Behalf of Complainant S3 Graphics Co. Ltd. and S3 Graphics, Inc.:</i></b> Thomas L. Jarvis, Esq. Finnegan, Henerson, Farabow, Garrett & Dunner LLP 901 New York Ave., NW Washington, DC 20001	<input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Electronic Service
<b><i>On Behalf of Respondent Apple Inc.:</i></b> Chris R. Ottenweller, Esq Orrick, Herrington & Sutliff LLP 1000 Marsh Road Menlo Park, CA 94025	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Electronic Service

V. James Adduci, II  
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Washington, DC 20036

- Via Hand Delivery  
 Via First Class Mail  
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Dated: October 6, 2011



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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

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In the Matter of

CERTAIN DIGITAL IMAGING DEVICES  
AND RELATED SOFTWARE

Investigation No. 337-TA-724

---

**ADVANCED MICRO DEVICES, INC., ATI TECHNOLOGIES ULC, AND  
ATI INTERNATIONAL SRL'S MOTION FOR LEAVE TO FILE A REPLY IN  
SUPPORT OF THEIR MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF  
RAISING A DISPOSITIVE JURISDICTIONAL ISSUE AND REQUESTING  
TERMINATION OF THIS INVESTIGATION**

Pursuant to 19 C.F.R. §§ 210.15 and 210.19, Advanced Micro Devices, Inc. ("AMD"), ATI Technologies ULC, and ATI International SRL (collectively, "ATI") respectfully request leave to file a reply in support of their Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation ("AMD/ATI's Motion"). Counsel for AMD and ATI contacted counsel for S3G, Apple, and Staff to inform them of AMD's and ATI's intention to file this motion. Apple consents to this motion. S3G opposes this motion. Staff has not indicated a position on this motion.

Complainants, S3 Graphics Co., Ltd. and S3 Graphics, Inc. (collectively, "S3G"), have responded to AMD/ATI's Motion by reciting irrelevant facts, mischaracterizing the applicable precedents, and injecting unnecessary and counterproductive inflammatory rhetoric into this dispute. A reply is necessary, therefore, to focus the attention of the U.S. International Trade Commission ("Commission") on the facts and law that are actually dispositive of the dispute presented. This is particularly true in this case given that AMD/ATI's Motion challenges the

jurisdiction of the Commission to conduct this Investigation. If the Commission were to proceed in the absence of such jurisdiction, it would work a manifest injustice and prejudice to AMD/ATI. In particular, the Commission could issue a final decision that includes relief preventing the importation and sale of Apple computers that contain AMD/ATI graphic processing units (“GPUs”). In that case, AMD/ATI and its customer, Apple, would be precluded from importing and selling products based on supposed infringement of patents that they are actually authorized to practice.

A reply also is necessary to address certain of S3G’s arguments that are based on documents to which AMD/ATI did not previously have access. In particular, S3G contends that it owns the asserted patents by virtue of schedule 3.14(a) to the SONICblue-VIA Amended and Restate Investment Agreement (“ARIA”). *See, e.g.*, S3G Resp. at 7 (citing to Schedule 3.14 and referring to that schedule as “the schedule of assets that transferred from SONICblue to S3 Graphics Co., Ltd. on January 3, 2001”); S3G Resp. at 8 (S3G “obtained title to these yet-to-be-filed applications because the ‘Contributed Intellectual Property’ [ ] included ‘patents... and patent applications...’”). S3G goes so far as to accuse AMD/ATI of not submitting schedule 3.14(a) to the ARIA. S3G Resp. at 4 (“AMD/ATI’s omission of the key schedule identifying the patents SONICblue sold to S3G . . . is especially troubling.”); S3G Resp. at 25 (“The omission of these documents [ ] in the AMD/ATI ... motions is inexplicable.”). But AMD/ATI was not a party to the ARIA, and S3G marked schedule 3.14(a) as “confidential business information” in discovery. As a result, AMD/ATI had no access to schedule 3.14(a) before S3G attached it to its response to AMD/ATI’s Motion. Indeed, AMD/ATI’s counsel contacted S3G’s counsel to discuss AMD/ATI’s rights in the patents weeks before AMD/ATI filed its motion. AMD/ATI provided S3G’s counsel with the [

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] but S3G's counsel did not further respond or provide AMD/ATI's counsel with S3G's confidential schedule. AMD/ATI also made clear in its motion to intervene that it had no access to schedule 3.14(a). AMD/ATI Br. at 4, 25. Because schedule 3.14(a) is central to S3G's argument and because AMD/ATI has not previously had access to it, a reply addressing this newly disclosed document is necessary. And as demonstrated in AMD/ATI's proposed reply, schedule 3.14(a) is not dispositive of this dispute as claimed by S3G; it is irrelevant.

AMD/ATI's proposed reply, if accepted, would establish that AMD/ATI, not S3G, owns the asserted patents and that the Commission lacks jurisdiction over this investigation. As demonstrated in AMD/ATI's Motion, the prior owner of these patents, SONICblue Incorporated ("SONICblue") assigned these patents to ATI [

] AMD/ATI Motion at § III.B, Exs. 1, 7. [

] SONICblue and ATI recently executed and recorded an acknowledgment of this prior assignment of the asserted patents with the United States Patent and Trademark Office ("PTO"). ATI executed this acknowledgement on SONICblue's behalf pursuant to a power of attorney given to ATI to "take

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any and all reasonable action designed to vest more fully in ATI and the Purchasers the Acquired Assets.”

S3G opposes both the motion to intervene and the motion to terminate the investigation. S3G contends that (a) it owns the asserted patents by means of an assignment from SONICblue to S3G in January 2001; (b) the FireGL Business purchase agreements did not assign the patents to ATI; and (c) AMD/ATI’s September 2011 acknowledgment of the prior assignment recorded with the PTO has no legal effect. S3G Response at § II. Finally, S3G opposes AMD/ATI’s request for intervention as “untimely and procedurally improper.” *Id.* at § V.

The Staff also opposes AMD/ATI’s Motion, but on different grounds. In particular, the Staff contends that AMD/ATI’s motion is untimely, that Respondent Apple can adequately represent AMD/ATI’s interests in this matter, and that the Commission should not reopen the evidentiary record or remand the matter to the Administrative Law Judge to take evidence on the issue.

As established in AMD/ATI’s proposed reply, ATI clearly owns the patents that S3 Graphics Co., Ltd. and S3 Graphics, Inc. (collectively, “S3G”) have asserted and this Investigation should be terminated. ATI acquired these patents [

] Stripped of vitriol, S3G presents no evidence or argument to support a contrary conclusion. In particular, S3G does not dispute that the conveyance language used to describe [ ] and in the Bill of Sale and Assignment (“Assignment”) is broad enough to literally encompass the Asserted Patents.<sup>1</sup>

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<sup>1</sup> The “Asserted Patents” are U.S. Patent Nos. 6,658,146; 6,683,978; 6,775,417; and 7,043,087.



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Instead, S3G asks the Commission to ignore the broad conveyance language used to describe [

]. If so restricted, ATI would have acquired only the intellectual property listed in [ ]. S3G's clear misinterpretation of [ ] should be rejected at least because:

1. S3G's misinterpretation contradicts the plain meaning of the broad conveyance language used in the Purchase Agreement, including in particular the [ ];

2. S3G's misinterpretation contravenes Delaware law by rendering the broad conveyance language describing the [ ] [ ] language meaningless, instead giving the [ ] language a meaning that is the exact opposite of its literal meaning; and

3. Courts have consistently rejected attempts to restrict a broad conveyance followed by [ ] language to assets identified in a specified list. *See, e.g., Cooper Distrib. Co., Inc. v. Amana Refrigeration, Inc.*, 63 F.3d 262, 280 (3d. Cir. 1995); *see also Skycam v. Bennett*, No. 09-CV-294-GKF-FHM, 2011 WL 3293015, at \*7 (N.D. Okla. Aug. 1, 2011).

Because the broad conveyance language used in § 2.01(a) of the Asset Purchase Agreement ("Purchase Agreement") expressly states the list of specified assets is not exhaustive by using [ ], the assets ATI acquired include the Asserted Patents and are not limited to the specifically listed assets. *Skycam*, 2011 WL 3293015 at \*7.

**Business Proprietary Information  
Has Been Deleted**

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Based on S3G's submission, the Commission does not even have to reach the question whether SONICblue assigned the patents to S3G in 2001 to conclude that ATI owns the patents. S3G admits that it did not record any patent assignment it received in 2001 within three months pursuant to 35 U.S.C. § 261. S3G Resp. at 21. S3G does not contest that if ATI acquired the Asserted Patents [ ] ATI is a bona fide purchaser without notice of any prior assignment to S3G and any prior assignment to S3G is void under 35 U.S.C. § 261. Because ATI clearly acquired the Asserted Patents [ ], any prior assignment to S3G is void.

In any event, S3G has failed to prove that SONICblue assigned the Asserted Patents to S3G in January 2001. S3G candidly admits that the "Graphics Chip Business" it was formed to operate does not include the FireGL Business. S3G Resp. at 10. Since the Asserted Patents are clearly part of the FireGL Business, they were not included in the patents assigned to S3G in 2001. Consistent with this clear asset division, the May 2002 documents recorded in the PTO indicate that SONICblue assigned to S3G only the patents listed in Schedule A. None of the Asserted Patents, or pending patent applications that issued as Asserted Patents, are included in that assignment. Because it cannot show an assignment of the asserted patents in 2001, S3G even attempts to duck its burden to prove standing based on a valid assignment by claiming, contrary to Federal Circuit precedent, that all it has to show is that its name appears on the face of the patents.

Piecing the puzzle together, it appears that SONICblue may have indicated in the initial August 2000 Amended and Restated Investment Agreement ("ARIA") that it was going to assign many patents and patent applications to the S3G joint venture when it was formed. But SONICblue instead only assigned the patents identified in Schedule A, which did not include any

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of the Asserted Patents. S3G apparently discovered this limited assignment and sought to obtain a new assignment that included the asserted patents in 2006.

This emerging picture is confirmed by the terms of a Settlement Agreement that immediately preceded SONICblue's purported assignment of the asserted patents to S3G in November 2006. The Settlement Agreement obligates SONICblue to "use its commercially reasonable best efforts to transfer" the "intellectual property related to or used in the Graphics Chip Business that currently remains in [ ] possession,...and *was to be contributed pursuant to the Amended and Restated Investment Agreement.*" AMD/ATI Br. at Ex. 16, Doc. 2158-3 (filed 2/16/2007), § 5 (emphasis added); Ex. 19.

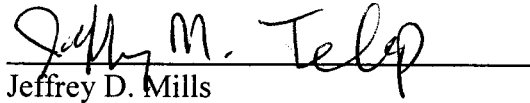
S3G's chain of title, however, was broken in March 30, 2001 when SONICblue assigned the Asserted Patents to ATI. ATI plainly owns the asserted patents as a result of this assignment and this Investigation should be dismissed. Nothing further is needed to establish ATI's ownership. *SiRF Tech., Inc. v. ITC*, 601 F.3d 1319, 1326 (Fed. Cir. 2010); *Filmtec Corp. v. Allied-Signal, Inc.*, 939 F.2d 1568, 1572-73 (Fed. Cir. 1991); *Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1253 (Fed. Cir. 2000).

For the foregoing reasons, AMD/ATI respectfully request that the Commission grant AMD/ATI leave to file a reply in support of AMD/ATI's Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation.

Dated: October 6, 2011

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Respectfully submitted,

A handwritten signature in black ink that reads "Jeffrey M. Telep". The signature is written in a cursive style and is positioned above a horizontal line.

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**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436**

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**In the Matter of**

**CERTAIN DIGITAL IMAGING DEVICES  
AND RELATED SOFTWARE**

**Investigation No. 337-TA-724**

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**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
ADVANCED MICRO DEVICES, INC., ATI TECHNOLOGIES ULC'S AND ATI  
INTERNATIONAL SRL'S MOTION TO INTERVENE FOR THE LIMITED PURPOSE  
OF RAISING A DISPOSITIVE JURISDICTIONAL ISSUE AND REQUESTING  
TERMINATION OF THIS INVESTIGATION**

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Pursuant to 19 C.F.R. § 210.19, Advanced Micro Devices, Inc. (“AMD”), ATI Technologies ULC and ATI International SRL (collectively, “ATI”) submit this reply in support of their motion to intervene and to request that the United States International Trade Commission (“Commission”) terminate this Investigation.

**I. INTRODUCTION**

ATI clearly owns the patents that S3 Graphics Co., Ltd. and S3 Graphics, Inc. (collectively, “S3G”) have asserted and this Investigation should be terminated. ATI acquired these patents [ ] Stripped of vitriol, S3G presents no evidence or argument to support a contrary conclusion. In particular, S3G does not dispute that the conveyance language used to describe [ ] and in the Bill of Sale and Assignment (“Assignment”) is broad enough to literally encompass the Asserted Patents.<sup>1</sup>

Instead, S3G asks the Commission to ignore the broad conveyance language used to describe [ ] If so restricted, ATI would have acquired only the intellectual property listed in [ ]. S3G’s clear misinterpretation of [ ] should be rejected at least because:

1. S3G’s misinterpretation contradicts the plain meaning of the broad conveyance language used in the Purchase Agreement, including in particular the [ ];
2. S3G’s misinterpretation contravenes Delaware law by rendering the broad conveyance language describing the [ ]

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<sup>1</sup> The “Asserted Patents” are U.S. Patent Nos. 6,658,146; 6,683,978; 6,775,417; and 7,043,087.

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[ ] language meaningless, instead giving the [ ] language a meaning that is the exact opposite of its literal meaning; and

3. Courts have consistently rejected attempts to restrict a broad conveyance followed by [ ] language to assets identified in a specified list. *See, e.g., Cooper Distrib. Co., Inc. v. Amana Refrigeration, Inc.*, 63 F.3d 262, 280 (3d. Cir. 1995); *see also Skycam v. Bennett*, No. 09-CV-294-GKF-FHM, 2011 WL 3293015, at \*7 (N.D. Okla. Aug. 1, 2011).

Because the broad conveyance language used in § 2.01(a) of the Asset Purchase Agreement (“Purchase Agreement”) expressly states the list of specified assets is not exhaustive by using [ ], the assets ATI acquired include the Asserted Patents and are not limited to the specifically listed assets. *Skycam*, 2011 WL 3293015 at \*7.

Based on S3G’s submission, the Commission does not even have to reach the question whether SONICblue assigned the patents to S3G in 2001 to conclude that ATI owns the patents. S3G admits that it did not record any patent assignment it received in 2001 within three months pursuant to 35 U.S.C. § 261. S3G Resp. at 21. S3G does not contest that if ATI acquired the Asserted Patents [ ] ATI is a bona fide purchaser without notice of any prior assignment to S3G and any prior assignment to S3G is void under 35 U.S.C. § 261. Because ATI clearly acquired the Asserted Patents [

], any prior assignment to S3G is void.

In any event, S3G has failed to prove that SONICblue assigned the Asserted Patents to S3G in January 2001. S3G candidly admits that the “Graphics Chip Business” it was formed to operate does not include the FireGL Business. S3G Resp. at 10. Since the Asserted Patents are clearly part of the FireGL Business, they were not included in the patents assigned to S3G in

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2001. Consistent with this clear asset division, the May 2002 documents recorded in the PTO indicate that SONICblue assigned to S3G only the patents listed in Schedule A. None of the Asserted Patents, or pending patent applications that issued as Asserted Patents, are included in that assignment. Because it cannot show an assignment of the asserted patents in 2001, S3G even attempts to duck its burden to prove standing based on a valid assignment by claiming, contrary to Federal Circuit precedent, that all it has to show is that its name appears on the face of the patents.

Piecing the puzzle together, it appears that SONICblue may have indicated in the initial August 2000 Amended and Restated Investment Agreement (“ARIA”) that it was going to assign many patents and patent applications to the S3G joint venture when it was formed. But SONICblue instead only assigned the patents identified in Schedule A, which did not include any of the Asserted Patents. S3G apparently discovered this limited assignment and sought to obtain a new assignment that included the asserted patents in 2006.

This emerging picture is confirmed by the terms of a Settlement Agreement that immediately preceded SONICblue’s purported assignment of the asserted patents to S3G in November 2006. The Settlement Agreement obligates SONICblue to “use its commercially reasonable best efforts to transfer” the “intellectual property related to or used in the Graphics Chip Business that currently remains in [SONICblue’s] possession,...and *was to be contributed pursuant to the Amended and Restated Investment Agreement.*” AMD/ATI Br. at Ex. 16, Doc. 2158–3 (filed 2/16/2007), § 5 (emphasis added); Ex. 19.

S3G’s chain of title, however, was broken in March 30, 2001 when SONICblue assigned the Asserted Patents to ATI. ATI plainly owns the asserted patents as a result of this assignment and this Investigation should be dismissed. Nothing further is needed to establish ATI’s

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ownership. *SiRF Tech., Inc. v. ITC*, 601 F.3d 1319, 1326 (Fed. Cir. 2010); *Filmtec Corp. v. Allied-Signal, Inc.*, 939 F.2d 1568, 1572–73 (Fed. Cir. 1991); *Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1253 (Fed. Cir. 2000).

## II. ARGUMENT

### A. AMD/ATI's Motion to Intervene to Raise an Issue of Subject Matter Jurisdiction Should Be Granted.

S3G and the Office of Unfair Import Investigations (“OUII”) provide no basis for denying AMD/ATI’s request to intervene when the four intervention criteria are liberally construed and of AMD/ATI’s allegations and evidence are accepted as true. AMD/ATI Br. at 10–15.

*Intervention criteria (1) and (2) are met.* OUII acknowledges that AMD/ATI satisfy the first two intervention criteria. OUII Resp. at 6. Similarly, S3G admits that AMD and ATI’s ability to sell AMD/ATI Graphics Processing Unit (“GPU”) hardware products to Apple could be affected by a Commission final decision. S3G Resp. at 34. S3G contests ATI’s showing that S3G’s enforcement of the patents interferes with ATI’s ownership rights solely by assailing the timeliness of the motion, and calling AMD/ATI’s ownership claims “spurious.” S3G Resp. at 33. Accepted as true, AMD/ATI’s allegations and evidence undeniably show that ATI acquired the Asserted Patents [ ] As even OUII acknowledges, “there appear serious questions as to whether the sale of the FireGL line of products resulted in a transfer of the asserted patents.” OUII Resp. at 5.

*Intervention criteria 3 is met.* Contrary to OUII and S3G’s assertions (OUII Resp. at 6, S3G Resp. at 35–36), AMD/ATI have clearly met the minimal showing required to establish that Apple may not be able to adequately represent AMD/ATI’s interests because it is not the patent owner, did not raise the issue of ATI’s patent ownership in this Investigation, and does not have

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access to AMD/ATI's internal business information and personnel except by subpoena. AMD/ATI Br. at 12–13. Both OUII and S3G acknowledge that Apple did not assert ATI's ownership rights in this Investigation. OUII Resp. at 9; S3G Resp. at 3–5. And, S3G's discussion of Apple's attempts to subpoena information from AMD only highlights that Apple cannot adequately represent AMD/ATI's patent ownership interests. Apple must subpoena AMD and ATI to get information, and its prior attempts to subpoena AMD reveal that Apple does not know what information AMD/ATI has, who has it, or where it is located. S3G Resp. at 35.

*Intervention criteria 4 is met.* The crux of S3G and OUII's opposition is that AMD/ATI's motion to intervene is allegedly not timely. Under the circumstances presented here, AMD/ATI's motion to intervene is timely at least because: (i) it raises an important issue of the Commission's subject matter jurisdiction, (ii) was filed within weeks after AMD/ATI discovered the facts that revealed ATI owned the patents, and (iii) the risk of prejudice to AMD/ATI heavily favors intervention. AMD/ATI Br. at 13–15; Apple Resp. at 1–2.

First, AMD/ATI's motion is timely because it raises the important issue of subject matter jurisdiction that cannot be waived. OUII and S3G seek to apply the “timeliness” criteria in a way that results in a *de facto* waiver of the right to raise subject matter jurisdiction. But the Supreme Court has made clear that “a party does not waive the requirement [of subject matter jurisdiction] by failing to challenge jurisdiction early in the proceedings.”<sup>2</sup> *Ins. Corp. of Ir., Ltd. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702 (1982). Neither S3G nor OUII cite a single case where any court has denied as untimely a motion to intervene to raise subject matter

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<sup>2</sup> See also *Bd. of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 583 F.3d at 841 (Fed. Cir. 2009) (“It is well settled that questions of standing can be raised at any time and are not foreclosed by, or subject to, statutes of limitation.”).

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jurisdiction. Indeed, OUII relies on *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103–04 (10th Cir. 2005), where the Court permitted Dichter to intervene for the first time on appeal “due to the importance of addressing the questions of subject matter jurisdiction.”

Second, AMD/ATI’s motion to intervene is timely because AMD/ATI intervened promptly. The issue is not, as S3G and OUII seek to frame it, when AMD/ATI first became aware that S3G was asserting the patents, or that S3G was asserting the patents against AMD/ATI GPUs. S3G Resp. at 27–28; OUII Resp. at 4. The issue is when AMD/ATI had knowledge that [

] Neither S3G nor OUII

dispute that AMD/ATI did not have this knowledge until August 2011, just before AMD/ATI moved to intervene. AMD/ATI Br. at 14–15. Indeed, S3G’s detailed description of AMD’s non-party involvement in this Investigation without raising ATI’s patent ownership (S3G Resp. at 28–30) is entirely consistent with, and serves as additional proof that, AMD/ATI promptly moved to intervene upon discovering [

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Finally, AMD/ATI agree with S3G and OUII that the Commission should consider the risk of prejudice in assessing whether the motion to intervene is timely. OUII Resp. at 3, S3G Resp. at 27–28, 33. The cases cited by OUII “recognize that delay in itself does not make a request for intervention untimely” and that “[t]he most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.” *Oklahoma v. Tyson Foods, Inc.*, 619 F.3d 1223, 1235 (10th Cir. 2010) (citing 7C Wright et al.). The risk of extreme prejudice to AMD/ATI in

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comparison to any prejudice that S3G may suffer weighs heavily in favor of permitting intervention. If AMD/ATI's motion to intervene is granted, the Investigation will be terminated or additional proceedings to address patent ownership will occur. S3G suffers no prejudice if the Investigation is terminated because ATI owns the patents and S3G had no right to file a complaint in the first place. If the Investigation is not terminated, S3G admits that whatever relief S3G may obtain, if any, is simply delayed for a time. S3G Resp. at 28. This stands in stark contrast to the injustice and prejudice that will befall AMD/ATI if they are not permitted to intervene. The Commission could issue a final decision that includes relief preventing the importation and sale of Apple computers that contain AMD/ATI GPUs. In that case, AMD/ATI and its customer, Apple, would be precluded from importing and selling products based on supposed infringement of patents that they are actually authorized to practice.

AMD/ATI's motion to intervene to raise the important issue of the Commission's subject matter jurisdiction should be granted.

### **B. The Commission Should Terminate this Investigation Because ATI Owns the Patents.**

#### **1. SONICblue Assigned the Asserted Patents to ATI in March, 2001.**

ATI clearly owns the patents that S3G has asserted and this Investigation should be terminated. ATI acquired the patents asserted by S3G [

] AMD/ATI Br. at 16–22.

S3G nowhere disputes that the conveyance language used to describe the “Acquired Assets” in the Purchase Agreement broadly captures the Asserted Patents. The plain terms of the Purchase Agreement and Assignment executed by SONICblue, [

] AMD/ATI Br. at 16–22 and Ex. 7, § 2.01(a), Ex. 1, ¶ 1. [

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] AMD/ATI Br. at 18–22. This broad, unqualified language necessarily includes the ‘146 and ‘978 patent applications pending on March 30, 2001 as well as any rights or value that could be derived from the subject matter described in the acquired ‘146 patent application, including the inventions claimed in the later-filed and issued ‘417 and ‘087 Patents. AMD/ATI Br. at 19–20; *Filmtec*, 939 F.2d at 1572; *EMD Crop Bioscience Inc v. Becker Underwood, Inc.*, 750 F. Supp. 2d 1004, 1013 (W.D. Wis. 2010). That the broad conveyance language in the Purchase Agreement and Assignment encompasses the Asserted Patents is further confirmed by other provisions in the Purchase Agreement, and the recently executed acknowledgement, which specifically identifies the Asserted Patents as assets that ATI acquired in March 2001.<sup>4</sup> AMD/ATI Br. 22–25.

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<sup>3</sup> S3G conclusorily claims that it “had prosecuted the patents after January 3, 2001” (S3G Resp. at 9) but points to no evidence, and there is none in the PTO prosecution history records, of any activity on behalf of S3G until well after March 30, 2001. The applications were being prosecuted on behalf of SONICblue and there is no mention of S3G in the ‘146 Patent application anywhere until May 2003 and no mention of S3G in the ‘978 prosecution until June 2003. Reply Exs. 27 (first appearance in ‘146 Prosecution History) and Ex. 28, (first appearance in ‘978 Prosecution History).

<sup>4</sup> S3G vehemently objects to this acknowledgment, including levying unfounded personal attacks on AMD/ATI’s Director of Patents and Licensing, but provides no basis to preclude the acknowledgment from having legal effect as evidence that the Asserted Patents were assigned to ATI. S3G Resp. at 17–20. ATI’s execution for SONICblue is expressly authorized by the power of attorney as an “action designed to vest more fully in ATI” the “Acquired Assets...sold or assigned to ATI” because it specifies that the Asserted Patents were “Acquired Assets.” It is also clearly authorized as an action designed to “provide for ATI...the benefit, use, enjoyment and possession of such Acquired Assets.” AMD/ATI Br. at Ex. 1 ¶ 2. S3G’s arguments that the acknowledgment is void mischaracterize the document as an “assignment” in 2011 rather than an acknowledgment of a prior assignment on March 30, 2001. As a result, S3G’s claims of “self-dealing” and “breach of fiduciary duty” are non sequitur because the acknowledgment itself merely identifies previously transferred assets and transfers no property interest. S3G’s claim that the power of attorney is “highly suspect” because the Asserted Patents were not issued in March 2001 ignores that the power of attorney is “irrevocable” and thus literally contemplates future uses, for instance to identify obtained assets more specifically based on future events. And in any event, S3G cannot void this



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Remarkably, S3G's only rejoinder is to attempt to contradict the plain meaning of the broad conveyance language in the Purchase Agreement and limit the assets ATI acquired to the specific assets listed in enumerated subparagraphs that follow the broad conveyance language. S3G claims that [

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acknowledgment under Delaware law, only SONICblue can. *See Shock v. Nash*, 732 A.2d 217, 224–26 (Del. Supr. 1999); *Stegemeier v. Magness*, 728 A.2d 557, 563 (Del. Supr. 1999).

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[

] *Cooper Distributing*, 63 F.3d at 280; *Skycam*, 2011 WL 3293015 at

\*7. [

] *Cooper*

*Distributing*, 63 F.3d at 280; *Skycam*, 2011 WL 3293015 at \*7; *EMD Crop Bioscience, Inc.*, 750

F. Supp. 2d at 1013.

Courts have specifically rejected attempts to limit broad conveyance language to a list of specified examples when the list is preceded by [ ] language. In *Cooper Distributing*, Circuit Judge Alito of the Third Circuit rejected Cooper's attempt to limit language in a distribution agreement that "Amana reserves the right to make sales *directly* or through other channels of distribution, *including but not limited to...*" a specified list of entities. 63 F.3d at 280 (emphasis in original). The Third Circuit held that the presence of the phrase "including but not limited to" made clear that the list was not exhaustive:

But since this list is prefaced by the phrase "including but not limited to," [Cooper's] argument is unconvincing. The list merely gives examples of entities with whom Amana reserved "the right to make sales directly." By using the phrase "including, but not limited to," the parties unambiguously stated that the list was not exhaustive." *Id.*

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Similarly in *Skycam*, the Court rejected Skycam's attempt to limit the intellectual property rights conveyed by an Asset Purchase Agreement to the intellectual property rights listed in a specific subparagraph where the Agreement included broad conveyance language followed by including "without limitation" language and a specified list of assets. [ ], Outdoor-Channel Holdings, Inc. ("OCH") claimed that the broad conveyance language conveyed intellectual property rights that were not listed in the subparagraph or in the referenced schedules. Skycam contended that OCH acquired only the intellectual property identified in the schedules, based on the subparagraph stating that "[t]he Skycam Intellectual Property is set forth on [Schedule] 1.1(a)(2)" and a representation and warranty that there were no other inventions, know-how or trade secrets related to the business other than what was listed in the schedules. The Court specifically noted that the "without limitation" language indicated that the list of identified assets was not exhaustive:

In defining "Purchased Assets," the 2009 APA refers to "all of each Seller's right in and to all of the assets of Sellers." Although Section 1.1 contains a list of assets included in the transfer, the 2009 APA expressly states that the list is not exhaustive by noting that the Purchased Assets include, "without limitation," the specifically identified assets.

*Skycam*, 2011 WL 3293015 at \*6. S3G's proffered interpretation is not only contrary to the plain meaning of [

], it is contrary to Delaware law. Under Delaware law, contracts are not to be interpreted to render terms meaningless, especially when the interpretation results in giving language a meaning that is exactly the opposite of its literal meaning. *Priority Healthcare Corp. v. Aetna Speciality Pharmacy, LLC*, 590 F. Supp. 2d 663, 668–69 (D. Del. 2008) (citing 11 Williston on Contracts § 32:5 (4th ed.) for the proposition that a contract should not be read so as to render any terms or provisions meaningless). S3G's interpretation improperly takes the

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[

] *See Cooper Distributing*, 63

F.3d at 280; *Skycam*, 2011 WL 3293015 at \*7.

S3G's interpretation is also [

]

S3G's reference to [ ] does not change the plain meaning or scope of the assets  
ATI acquired. S3G Resp. at 10–15. [

] AMD/ATI Br. at Ex. 7, Article III. In *Skycam*, the Court rejected a [ ] attempt  
to limit broad conveyance language based on a representation or warranty that there were no  
other “inventions, know-how or trade secrets” other than those listed in Schedule 1.1(a)(2):

Subsection 4.11(c) is part and parcel of the  
“Representations and Warranties” section of the 2009 APA.  
Skycam LLC's omission to list additional alleged “inventions,  
know-how or trade secrets” on Schedule 1.1(a)(2) does not

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function as a matter of law to limit the inventions, know-how, trade secrets and confidential and proprietary information actually owned by Skycam LLC and transferred to OCH.

2011 WL 3293015 at \*6–7. [

] *See id.*

**2. ATI Owns the Patents Regardless of Whether They Were Transferred to S3G in January 2001.**

Based on S3G’s response, the Commission does not need to reach the question whether SONICblue assigned the Asserted Patents to S3G in January 2001 to conclude that ATI owns the patents and terminate this Investigation. First, S3G argues only that ATI did not acquire the Asserted Patents. It does not contest that if ATI acquired the Asserted Patents [

], ATI is a bona fide purchaser without notice of any prior assignment to S3G and any January 2001 assignment to S3G is void under 35 U.S.C. § 261. In fact, S3g admits that it “did not record SONICblue’s assignment” before May 7, 2002. S3G Resp. at 21. Because ATI clearly [ ] any prior assignment to S3G is void. AMD/ATI Br. at 33–34.

Second, the Commission does not have to reach the question whether SONICblue assigned the patents to S3G in 2001 because the Purchase Agreement and Assignment transferred any rights that S3G may have had. [

] AMD/ATI Br. at 34. S3G claims only that it is not a [ ] because 50% ownership of the voting common stock is not a “majority.” S3G Resp. at 16. S3G cites to Delaware caselaw stating that courts look to

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dictionaries for assistance in determining the meaning of terms not defined in a contract, but ignores that there are multiple dictionaries and multiple meanings of the term “majority.” S3G Resp. at Ex. C. Because the common stock is divided three ways and SONICblue owns 50% while the other two divisions have less, S3G’s ownership is greater than each of the others and can most certainly be considered a majority. *See, e.g., Ninth New Collegiate Dictionary*, 718 (1986) (defining majority as “1: the quality or state of being greater”); *The American Heritage Dictionary*, 1056 (4th ed. 2006) (defining majority as “1. the greater number or part.”). In addition, S3G has not presented any evidence to show that SONICblue did not have an ownership interest in any other entity who received voting stock (the JV identifies Wallvision Electronic, Inc. and VIA Technologies, Inc. as two such entities). If SONICblue owns any portion of those entities, it would own more than 50% of the common voting stock and would be a [ ] even under S3G’s definition of “majority.” At the very least, the Commission should remand to the ALJ for fact findings concerning S3G’s [ ] status.

### **3. The Asserted Patents Were Not Transferred to S3G in January 2001 Because the FireGL Business Was Expressly Excluded.**

S3G fails to establish that the Asserted Patents were assigned to it in January 2001. S3G Graphics Co., Ltd. is a joint venture originally formed as a result of an ARIA and a Joint Venture Agreement between SONICblue and VIA Technologies, Inc. The plain language used in the ARIA indicates that the Asserted Patents were not part of the “Graphics Chip Business” that S3G was formed to operate. S3G admits that under these agreements SONICblue agreed to contribute its “Graphics Chip Business Assets” to S3 Graphics, Co., Ltd. S3G Resp. at 6. S3G also admits that the ARIA expressly states that the “Graphics Chip Business” does not include SONICblue’s FireGL Business. S3G Resp. at 10. As S3G states, “the ‘FireGL Business’ was expressly carved out and excluded from the contract between SONICblue and S3 Graphics Co., Ltd.” *Id.*

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Because the “Graphics Chip Business” admittedly did not include the FireGL Business or its assets, the Asserted Patents were not “contributed to” the S3G joint venture if they were assets of the [ ] As discussed above, the Asserted Patents were assets of the FireGL Business so they were not part of the S3G “Graphic Chip Business.”

S3G cannot evade the clear terms of the ARIA by creating the misimpression that the ARIA assigned the Asserted Patents, or claiming that AMD/ATI did not provide the Commission with ARIA Schedule 3.14(a). *See, e.g.*, S3G Resp. at 7 (citing to Schedule 3.14 and referring to that schedule as “the schedule of assets that transferred from SONICblue to S3 Graphics Co., Ltd. on January 3, 2001”); S3G Resp. at 8 (S3G “obtained title to these yet-to-be-filed applications because the ‘Contributed Intellectual Property’ [in the ARIA] included ‘patents... and patent applications...”). S3G neglects to mention that S3G previously marked Schedule 3.14(a) confidential and AMD/ATI had no prior access to it. Indeed, AMD/ATI’s counsel contacted S3G’s counsel to discuss AMD/ATI’s rights in the patents weeks before AMD/ATI filed its motion. AMD/ATI provided S3G’s counsel with the [

] but S3G’s counsel did not further respond or provide AMD/ATI’s counsel with S3G’s confidential schedule.

Moreover, the provisions of the ARIA, including Schedule 3.14(a), do not effect an assignment of any assets to S3G, much less an assignment of the Asserted Patents. The ARIA is an August 2000 agreement to form a joint venture in the future by way of a subsequent agreement. S3G Resp. at Ex. B. S3G had not been formed when the ARIA was executed, and this Agreement transfers nothing to an entity that did not exist. The plain language of Section 3.14 says that SONICblue “will transfer” certain intellectual property to the joint venture in the future (*i.e.*, after it is formed). *Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1580–81

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(Fed. Cir. 1991) (holding that “will be assigned” does not create “a present assignment of an expectant interest”). S3G Resp. at Ex. C. At most, these documents reveal that SONICblue may have intended to transfer a list of patents and patent applications included in Schedule 3.14(a) at some later time period after the S3G joint venture was formed.<sup>5</sup>

In the end, S3G is left only with the documents recorded with the PTO in May 2002. *See* S3G Resp. at 9 (referring to a 2001 patent assignment from SONICblue identified as Ex. E)<sup>6</sup> and S3G Resp. at 21 (“S3G did record SONICblue’s assignment of the Asserted Patents or pending applications for the Asserted Patents, on May 7, 2002”). As AMD/ATI explained and S3G does not refute, the May 2002 Documents assign only specific patents listed in “the attached Schedule A,” and none of the Asserted Patents, or pending applications that issued as Asserted Patents, are listed in Schedule A. AMD/ATI Br. at Ex. 15, Reel 012852 Frame 0016–34. The PTO assignment records for the Asserted Patents show a 2000 transfer from S3, Incorporated to SONICblue, and a 2006 assignment to S3G, but nothing in 2001. This is precisely why S3G purportedly obtained an assignment of the Asserted Patents from SONICblue in November 2006, which it did not need to do if the patents had already been assigned.

Although S3G claims that the May 2002 Documents include a 2001 assignment document that “listed the same schedule of transferred assets” shown on Schedule 3.14(a), S3G’s claim is not substantiated by evidence. As discussed above, the PTO assignment records indicate that whatever was assigned in 2001 did not include any of the Asserted Patents. The assignment

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<sup>5</sup> AMD/ATI note that what S3G claims to be an alleged cut-out from Schedule 3.14 has been modified to add “9/21/99 5,956,431.” S3G Resp. at 7. This patent was issued nearly a year earlier than August 2000, but S3G’s purported schedule curiously refers only to a patent that is “issued” without any reference to the patent number.

<sup>6</sup> Exhibit E has not been authenticated and does not include PTO reel and frame numbers. AMD/ATI has not previously seen this document and objects to it as a separate document apart from the May 2002 Documents.



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document itself does not indicate otherwise. AMD/ATI Br. at Ex. 15, Reel 012852 Frame 0022–23, S3G Resp. Ex. E. In particular, the document refers to “inventions and patent applications and disclosures in Schedule 1,” but there is no annexed document titled “Schedule 1.” *Id.* The only table listing patents other than Schedule A is non-descriptively titled “all.” *Id.*, Reel 012852 Frame 0030–34. By contrast, the title Schedule A clearly appears on each page of the table referred to as the “attached Schedule A.” *Id.*, Reel 012852 Frame 0017–21. Similarly, when S3G sought an assignment in 2006, that assignment referred to an annexed “Schedule 1,” and an attached table is included that is clearly titled “Schedule 1.” AMD/ATI Br. at Ex. 4, Reel 026598 Frame 0181. In addition, the 2001 assignment document refers only to “inventions,” “patent applications,” and “disclosures” but no patents. AMD/ATI Br. at Ex. 15, Reel 012852 Frame 0022–23. The table entitled “all,” however, lists many patents, not just applications and disclosures. AMD/ATI Br. Ex. 15, Reel 012852 Frame 0030–34. Again by contrast, when S3G sought a purported assignment of the Asserted Patents in 2006, that assignment clearly referred to “patents” as well as patent applications. AMD/ATI Br. at Ex. 4, Reel 026598 Frame 0179–80.

Finally, a comparison of the entries in just the first page of the table titled “all” in the May 2002 Documents with the table S3G claims to be Schedule 3.14(a) reveals that they are not “the same schedule.” There are many differences. For example, several of the entries in the table claimed to be Schedule 3.14(a) are not on the table entitled “all,” including entries for CR0011 PCT, CR0030 PCT, and CR0031 US. And most notably, though S3G claims the table entitled “all” reflects the “status” as of January 2001, and Schedule 3.14(a) is supposed to reflect the status over four months earlier, many of the entries suggest that the table entitled “all” is actually from an earlier point in time than Schedule 3.14(a):

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First Two Rows of Table	Status Claimed in August 2000 “Schedule 3.14(a)” Table S3G Resp. Ex. D at S3G 00078470–71	Status Claimed in “All” Table of May 2002 Documents S3G Resp. Ex. E at S3G00078824–25
CR0005 JP	allowed	pending
CR0017 TW	issued	allowed
CR0022 TW	issued	pending

S3G has presented insufficient evidence to establish an assignment of the Asserted Patents in 2001. In particular, S3G’s evidence fails to establish: (i) that any patents were assigned in 2001 other than the patents listed in Schedule A, (ii) what patent applications were transferred by the assignment document referred to as “Schedule 1,” and/or (iii) that the table entitled “all” in the May 2002 Documents is Schedule 1.

**C. ATI’s Clear Evidence of Ownership Cannot Be Avoided by Pointing to S3G’s Name on the Face of the Patents.**

S3G and OUII cannot avoid S3G’s burden to prove standing, or ATI’s clear evidence of ownership, by pointing to S3G’s name on the face of the patents. OUII Resp. 9–10, S3G Resp. at 5–6. OUII erroneously asserts that S3G has conclusively established patent ownership for standing purposes because its name appears on the face of the patents, and that ATI has at most an “equitable interest” in the Asserted Patents. OUII Resp. at 9–10. But under Federal Circuit precedent, ATI owns the Asserted Patents because the [

]; ATI does not have only an “equitable interest” that requires a further court ruling. The Federal Circuit has made clear that an agreement with “assigns” language effects an “automatic assignment” of patent ownership, nothing more is required. *SiRF Tech.*, 601 F.3d at 1326; *Filmtec*, 939 F.2d at 1572–73; *Speedplay, Inc.*, 211 F.3d at 1253. Here the Assignment executed by SONICblue expressly states that SONICblue “sells, assigns, transfers, conveys and delivers to

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ATI” all right, title, and interest in the “Acquired Assets.” AMD/ATI Br. at Ex. 1, ¶1. Nothing further is required to establish ATI’s ownership.

Because the [ ] clearly effect an assignment, the assignment agreements must be analyzed to determine S3G’s standing. In *SiRF*, the Federal Circuit determined whether Global Locate had standing by analyzing an assignment agreement between Magellan and one of the inventors even though Global Locate’s name appeared on the face of the patent. 601 F.3d at 1325–28. Had Global Locate’s name on the face of the patent been enough, or had the assignment agreement transferred only an “equitable interest” in the patents, there would have been no reason to analyze the agreement’s assignment language to determine whether Global Locate had standing. *See also Certain Catalyst Components & Catalysts for the Polymerization of Olefins*, Inv. No. 337-TA-307, 1990 ITC LEXIS 224, Order No. 23 (June 25, 1990) (dismissing for lack of standing after analyzing assignment agreement to determine if sufficient ownership rights were assigned); *Certain Point of Sale Terminals and Components Thereof*, Inv. No. 337-TA-524, 2005 WL 1262059, Order No. 31 (Feb. 7, 2005) (same).

OUII cites *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-641 (Comm’n Op., March 2, 2010) (“*Wind Turbines*”) and *Arachnid, Inc.*, but neither conflicts with *SiRF*. OUII Resp. at 9–10. In *Arachnid, Inc.*, for example, no assignment existed until the district court ordered Kidde to assign the patents to Arachnid. The Federal Circuit held that during the time period before the assignment, Arachnid had only an “equitable interest” in the patents that did not become a legal title until the patents were assigned. 939 F.2d. at 1580–81. Here, unlike *Arachnid, Inc.*, SONICblue actually assigned the Asserted Patents to ATI on March 30, 2001. No “equitable interest” is present because an actual assignment already occurred.

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*Wind Turbines* is virtually identical to *Arachnid, Inc.* only in the context of an individual unnamed inventor. Like *Arachnid, Inc.*, no prior written document established ownership before the Commission ruled that Wilkins was an inventor. *Id.* at 36. The respondents claimed that the Commission's ruling that Wilkins was an inventor meant that Wilkins was also a co-owner, and that the failure to join Wilkins meant the Commission lacked jurisdiction. The Commission held, however, that Wilkins had only an "equitable interest" and not legal title until a district court corrected inventorship under 35 U.S.C. § 256. *Id.* Unlike *Wind Turbines*, ATI's patent ownership was established by an assignment on March 30, 2001. To the extent that OUII or S3G construe *Arachnid, Inc.* or *Wind Turbines* to suggest that the Commission can establish standing without analyzing ATI's assignment from SONICblue, such an interpretation conflicts with the Federal Circuit's *SiRF* decision and is untenable.

S3G does not go so far as to claim that the Commission can avoid analyzing the ATI assignment from SONICblue to determine whether S3G has standing. Instead, S3G seeks to avoid its burden to prove standing—and in particular to show proof of an actual assignment of the Asserted Patents in January 2001—by claiming a presumption of ownership because its name is listed on the face of the patents.<sup>7</sup> S3G Resp. at 5–6. According to *SiRF*, however, S3G is not entitled to a presumption of ownership just because its name appears on the patents. S3G must show a prior assignment of the patents that is recorded in the PTO pursuant to 35 U.S.C. § 261 to be entitled to a presumption that it is the patent owner. *SiRF*, 601 F.3d at 1327–28. Here, S3G admits that it does not rely on a patent assignment timely recorded in the PTO before SONICblue's assignment to ATI, so no presumption applies. S3G Resp. at 21. Accordingly,

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<sup>7</sup> *Certain Semiconductor Chips with minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-605, 2008 ITC LEXIS 2257 (ITC Dec. 1, 2008) cited by S3G involves the "presumption in patent law that an inventor owns his invention" not an entity claiming ownership through an assignment.

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S3G has the burden to show that it owns the Asserted Patents, including the burden to prove a prior assignment in 2001 that is valid over ATI's patent ownership rights. That it has not done.

Even if S3G is wrongly given the benefit of a presumption of ownership, AMD/ATI has clearly rebutted any such presumption by showing that it owns the patents by virtue of an assignment from SONICblue, and that any alleged prior assignment to S3G is void under 35 U.S.C. § 261. *SiRF*, 601 F.3d at 1327–28. Here, AMD/ATI's clear evidence is more than sufficient to rebut any presumption of ownership arising from the face of the patents because, as discussed above, SONICblue assigned the patents to ATI when [

] and 35 U.S.C. § 261 plainly applies.

**D. All of S3G's Prior Ownership Activities Are Irrelevant.**

All of S3G's evidence that it has been improperly parading around as the owner of the patents since each patent issued is simply irrelevant. S3G Resp. at 23–24. S3G and OUII do not dispute ATI's allegations that it just learned of the facts that indicate the Asserted Patents are rightfully owned by ATI. AMD/ATI Br. at 15. Neither S3G nor OUII cite a single case that suggests an owner of personal property is foreclosed from claiming property that it rightfully owns once the discovery of ownership is made. Indeed, the opposite is true, ATI may assert its ownership of the patents at any time. *See, e.g., Bd. of Trustees of the Leland Stanford Junior Univ.*, 583 F.3d at 838–49; *Picture Patents, LLC v. Aeropostale, Inc.*, No. 07-Civ.-5567 (JGK), 2011 WL 1496347, at \*5–9 (S.D.N.Y. April 18, 2011) (IBM asserts in 2007 rights in patents arising from assignment in 1990).

In any event, S3G's own conduct is clearly a reason why ATI did not assert its claim of patent ownership until now. [

**Business Proprietary Information  
Has Been Deleted**

] All

that changed in March 2011. Because the record here is uncontested that the [

]

AMD/ATI Br. at 20–22.

**E. S3G’s Unfounded Accusations and Vitriol Underscore the Lack of Factual and Legal Support for Its Position.**

S3G’s response is regrettably rife with uncivil vitriol, false accusations and mischaracterizations. For example, S3G repeatedly calls AMD/ATI’s ownership claims based on the plain meaning of the Purchase Agreements and Assignment “frivolous,” “baseless,” “spurious” and “gamesmanship,” when its counterposition contradicts the plain meaning of the agreements and it does not cite a single case that supports giving language that says “without limitation” the exact opposite construction of “limited to.” S3G’s table pounding tactics merely underscore the weakness of S3G’s position. *See, e.g., Righthaven LLC v. Democratic Underground, LLC*, No. 2:10-cv-1356-RLF-GWF, 2011 WL 1457743, at \*2 (D. Nev. April 14, 2011) (“The use of phrases . . . such as ‘underhanded,’ ‘a ruse,’ ‘blatantly ignored,’ ‘brazen attempt,’ ‘fumbling attempt,’ ‘purposefully muddle’ . . . is a very unprofessional attempt to attack counsel rather than address the issues. There is an old adage in the law that if the facts are on your side, you pound on the facts. If the law is on your side, you pound on the law. If neither the facts nor the law is on your side, you pound on the table. It appears there is a lot of table

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<sup>8</sup> The ‘146 Patent issued December 2, 2003, the ‘978 Patent issued on January 27, 2004, the ‘417 Patent issued on August 10, 2004, and the ‘087 Patent issued on May 9, 2006. *See* AMD/ATI Br. at Exs. 8–11.

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pounding going on here.”); *Donaldson v. Exelon Corp.*, Civil Action No. 05-1542, 2006 WL 2668573, at \*1 (E.D. Pa. Sept. 14, 2006) (“[T]hese filings . . . seem to have taken the old lawyerly advice that if the law is against you, argue the facts; if the facts are against you, argue the law; if both the law and the facts are against you, attack the other side.”).

**III. CONCLUSION**

For the foregoing reasons, AMD and ATI’s motion to intervene should be granted, and the Commission should enter an order terminating the Investigation because S3G does not own the Asserted Patents. Alternatively, the Commission should grant AMD and ATI’s motion to intervene and remand this proceeding to the Administrative Law Judge for an Initial Determination regarding S3G’s standing and ATI’s rights in the Asserted Patents.

Respectfully submitted,

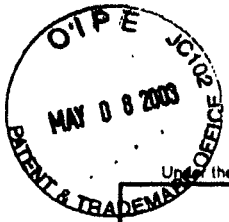


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# **Exhibit 27**





K. Ward  
5/22/03  
#13 Terminal  
Disclaimers

PTO/SB/26 (10-00)  
Approved for use 10/31/2002. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBTAIN A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

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MAY 12 2003

Technology Center 2600

In re Application of: Konstantine I. Iourcha et al.

Application No.: 09/351,930

Filed: July 12, 1999

For: Fixed-Rate Block-Based Image Compression with Inferred Pixel Values

The owner, S3 Graphics Co., Ltd., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, or prior Patent No. 5,956,431.

The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

- 1.  For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

- 2.  The undersigned is an attorney or agent of record.

Norman R. Klivans 4/30/03  
Signature Date

Norman R. Klivans

REG. # 33,003  
Typed or printed name

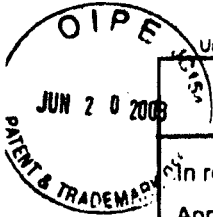
- Terminal disclaimer fee under 37 CFR 1.20(d) included.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

05/09/2003 AWONDAF1 00000129 09351930  
01 FC:1814 110.00 OP

# **Exhibit 28**



TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A PRIOR PATENT

Docket Number (Optional)

In re Application of: Konstantine I. Iourcha et al.

Application No.: 09/351,930

Filed: July 12, 1999

For: Fixed-Rate Block-Based Image Compression with Inferred Pixel Values

The owner, S3 Graphics Co., Ltd., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,956,431. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

- 1. [ ] For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

- 2. [X] The undersigned is an attorney or agent of record.

Norman R. Kivians 4/30/03
Signature Date

Norman R. Kivians
Typed or printed name
DOB: # 33.003

- [X] Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

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**In the Matter of**  
**CERTAIN DIGITAL IMAGING DEVICES**  
**AND RELATED SOFTWARE**

---

**Investigation No. 337-TA-724**

**ORDER**

Upon consideration of the motion of Advanced Micro Devices, Inc., ATI Technologies ULC, and ATI International SRL for leave to file a reply in support of their Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation (AMD/ATI's Motion") and all responses thereto, it is hereby

ORDERED that AMD/ATI's Motion is granted and it is further

ORDERED that that the Reply Memorandum Of Points And Authorities In Support Of Advanced Micro Devices, Inc., ATI Technologies ULC, and ATI International SRL's Motion To Intervene For The Limited Purpose Of Raising A Dispositive Jurisdictional Issue And Requesting Termination Of This Investigation is accepted for filing.

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For the Commission