MOTOROLA MOBILITY

August 30, 2011

By Email: lmeier@drm.com

Lawrence H. Meier, Esq.
Downs Rachlin Martin PLLC
Courthouse Plaza
199 Main Street
P.O. Box 190
Burlington, VT 05402-0190

Re: *Arnouse Digitial Devices Corp. v. Motorola Mobility, Inc.*, 5:11-CV-155 (D. Vt. 2011).

Dear Larry:

We are in receipt of your letter of August 22, 2011, regarding the above-referenced matter, and I write in response to it.

We have analyzed the infringement theory contained in your August 22nd letter and strongly disagree with your interpretation of the relevant claim language. Indeed, your arguments are in such direct contradiction of both black letter law and the patent's prosecution history as to be frivolous.

However, there is an even more disturbing deficiency in Arnouse's infringement claim. You candidly admit that, to prevail on your flawed theory, you first "would ask your expert to disable the screen of [an] Atrix phone" to confirm whether your theory of infringement would be viable even if your strained construction of the claims were adopted. This statement reveals that Arnouse has failed to conduct a reasonable pre-suit investigation as Rule 11 requires, and instead filed its lawsuit (a) on mere speculation that the accused device might infringe if it could be operated in a certain way, and (b) in the absence of any confirmation whatsoever that the device in fact operates in the way you believe it must for infringement to occur.

Filing an infringement suit without testing the accused device for infringement violates Federal Rule of Civil Procedure 11. *See View Eng'g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 985 (Fed. Cir. 2000) (upholding Rule 11 sanctions for inadequate pre-suit investigation where plaintiff's counsel admitted that belief of infringement was formed merely "'based on what we could learn about [defendant's] machines from publicly available information, and [defendant's] literature,'" without testing device in question); *Judin v. United States*, 110 F.3d 780, 784 (Fed. Cir. 1997) (vacating as abuse of discretion district court's denial of Rule 11 sanctions where plaintiff and counsel "failed to obtain, or attempt[] to obtain, a sample of the accused device . . . so that its actual design and functioning could be compared with the patent. . . . Under these circumstances,

there is no doubt that [plaintiff] failed to meet the minimum standards imposed by Rule 11.").

Here, just as in *View Engineering* and *Judin*, Arnouse has failed to conduct an adequate pre-suit investigation.

Motorola Mobility has had to expend resources in analyzing and defending Arnouse's baseless allegations. If Arnouse continues to pursue its claims against Motorola Mobility, we will seek reimbursement of Motorola Mobility's fees.

We agree to forgo seeking reimbursement of such fees if your client dismisses the current lawsuit within 10 days. Please let us have your response to this demand as soon as possible.

Very truly yours,

Timothy M. Kowalski
Lead Intellectual Property Counsel

cc: Molly Peck, Motorola Mobility, Inc.

Motorola Mobility, Inc.
600 North U.S. Highway 45
Libertyville, IL 60048-1286