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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 **MACROSOLVE, INC.**

12 **Plaintiff,**

13 **vs.**

14 **ANTENNA SOFTWARE, INC. ET AL.,**

15 **Defendants.**

Civil Action No. 6:11-cv-287 (Eastern
District of Texas)

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18 **NON-PARTY RPX CORPORATION'S OBJECTIONS AND RESPONSES TO**
19 **SUBPOENA *DUCES TECUM***
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EXHIBIT

1 Non-party RPX Corporation (“RPX”) states its objections and responses to the subpoena
2 *duces tecum* (the “Document Subpoena”) issued on behalf of MacroSolve, Inc. (“Requesting
3 Party”) in connection with *MacroSolve, Inc. v. Antenna Software, Inc. et al.*, Civil Action No.
4 6:11-cv-287 (Eastern District of Texas) (the “Action”). RPX reserves the right to supplement any
5 of its responses and/or objections set forth herein at any time in the future.

6 **DOCUMENT REQUEST**

7 All documents (including ESI and communications) relating to RPX’s request that the
8 Patent Office institute an *inter partes* review of MacroSolve’s patent, including all documents
9 relating to the initial idea for filing the IPR request, the planning for filing the IPR request, the
10 preparation of the IPR request, the filing of the IPR request, and any ongoing activities or
11 communications relating to the IPR request.

12 **OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST**

13 1. RPX objects to the Document Subpoena and the Request on the grounds that they
14 have been brought in an improper forum. The *inter partes* review (“IPR”) process before the U.S.
15 Patent and Trademark Office (“USPTO”) provides a means for Requesting Party to seek
16 discovery, and it is to that forum that Requesting Party should seek relief.

17 2. RPX objects to the Document Subpoena and Request to the extent that they are
18 unduly burdensome, overly broad, and fails to comply with the admonition of Fed. R. Civ. P.
19 45(c)(1) that subpoenas to third parties should “avoid imposing undue burden or expense on a
20 person subject to the subpoena.”

21 3. RPX objects to the Document Subpoena and the Request on the grounds that they
22 seek irrelevant information and are not reasonably calculated to lead to the discovery of
23 admissible evidence. Non-party RPX’s IPR request to the USPTO has no relevance to the claims
24 or defenses of any party to the Action, and thus the Document Subpoena and the Request exceed
25 the permissible scope of discovery under Fed. R. Civ. P. 26. RPX further objects to the Document
26 Subpoena and the Request to the extent they otherwise exceed the limits of permissible discovery
27 allowed under the Federal Rules of Civil Procedure, local rule, or any court order.

1 4. RPX objects to the Request to the extent that it seeks documents available from a
2 party or parties to the Action. To the extent Requesting Party believes that one or more parties to
3 the Action have participated in an IPR request and seeks such documents to assert claims or
4 defenses against those Parties, Requesting Party should seek such discovery directly from those
5 parties rather than burdening non-party RPX. *See Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D.
6 575, 577 (N.D. Cal. 2007) (“There is simply no reason to burden nonparties when the documents
7 sought are in possession of the party defendant.”).

8 5. RPX objects to the Request to the extent it calls for the production of documents
9 that are publicly available.

10 6. RPX objects to the Document Subpoena and the Request to the extent that the time
11 frame for compliance is unreasonable in light of scope of the request.

12 7. RPX objects to the Request to the extent it requires disclosure of privileged or other
13 protected matter, including but not limited to documents protected by the attorney-client privilege
14 and/or attorney work-product doctrine. The inadvertent production of documents protected by any
15 evidentiary or other privilege shall not be deemed a waiver of such privilege.

16 8. RPX objects to the Request to the extent it calls for documents containing trade
17 secrets or other confidential research, development, or commercial information or other sensitive
18 or confidential information protected by constitutional, statutory, or common law rights of
19 privacy. RPX further objects to the Request as it seeks disclosure of highly confidential
20 information that, if divulged, could harm RPX’s business interests and/or legal rights. Requesting
21 Party has not shown a substantial need for such information and has not shown that RPX can
22 produce documents without undue hardship.

23 9. RPX objects to the Document Subpoena and the Request to the extent they purport
24 to require RPX to make any form of production of electronically stored information that imposes
25 any differing or additional obligations from those set forth in the Federal Rules of Civil Procedure.

26 10. RPX objects to the Document Subpoena and the Request to the extent they seek
27 electronically stored information that is not reasonably accessible to RPX because of undue
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1 burden or cost. RPX further objects to the Subpoena to the extent it seeks electronically stored
2 information that is back-up data on the grounds that it is not reasonably accessible to RPX.

3 11. RPX objects to the Request on the ground that the terms “ESI”, “MacroSolve’s
4 patent” and “IPR request” are not identified or defined.

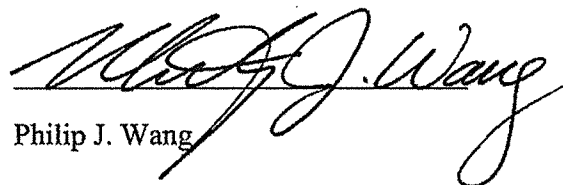
5 12. RPX objects to the Request to the extent it requires RPX to draw a legal conclusion
6 regarding the meaning of “MacroSolve’s patent.”

7 13. RPX objects to the Request on the ground that the terms “initial idea for
8 filing”, “ongoing activities or communications relating to the IPR request” and “planning for
9 filing” are vague and uncertain.

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LIM, RUGER & KIM LLP



Philip J. Wang

ATTORNEYS FOR NON-PARTY
RPX CORPORATION