

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

**Before The Honorable David P. Shaw  
Administrative Law Judge**

**In the Matter of**

**CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE**

**Investigation No. 337-TA-882**

**MOTION TO INTERVENE IN INVESTIGATION  
AND SUPPORTING MEMORANDUM OF GOOGLE INC.**

**MOTION**

Pursuant to Commission Rule 210.19, Google Inc. (“Google”) moves to intervene in this investigation. Google seeks to intervene to protect its significant interests and to defend the Google and YouTube, LLC (“YouTube”) proprietary products and services that are identified in the Complaint and the accompanying claim charts or that are otherwise within the scope of this investigation. YouTube is a wholly-owned subsidiary of Google. As set forth in more detail in the following memorandum, Google respectfully requests that its motion to intervene (“Motion”) be granted.<sup>1</sup>

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<sup>1</sup> Google presently seeks to intervene only as an intervenor and not as a respondent. Should its motion be granted, however, Google reserves the right to file a motion to change its status to that of a respondent if additional facts come to light in the investigation that would support such a request.

As required by Ground Rule 5(e), Google has made a reasonable and good-faith effort to contact and seek to resolve the subject matter of this Motion two days prior to filing this Motion. Respondents Samsung Electronics Co., Inc., Samsung Electronics America, Inc., Samsung Telecommunications America, L.L.C., LG Electronics, Inc., LG Electronics, Inc., LG Electronics, U.S.A., Inc., LG Electronics MobileComm U.S.A., Inc., Panasonic Corporation, Panasonic Corporation of America, Toshiba Corporation, Toshiba Corporation America Information Systems, Inc., Sharp Corporation, and Sharp Electronics Corporation (“Respondents”) indicated they do not oppose the Motion. Complainant Black Hills Media, LLC (“Black Hills” or “Complainant”) indicated that it will oppose the Motion. The Commission Investigative Staff has indicated that it will take a position after it reviews the Motion.

## **MEMORANDUM**

### **I. STATEMENT OF FACTS**

This investigation was instituted on June 18, 2013, as a result of a Complaint that was filed by Black Hills on May 13, 2013, alleging infringement of six patents by one or more of twelve Respondents, including OEMS for Android devices, Samsung Electronics Co., Inc., Samsung Electronics America, Inc., Samsung Telecommunications America, L.L.C., LG Electronics, Inc., LG Electronics, Inc., LG Electronics, U.S.A., Inc., LG Electronics MobileComm U.S.A., Inc., Panasonic Corporation, Panasonic Corporation of America, Toshiba Corporation, Toshiba Corporation America Information Systems, Inc., Sharp Corporation, and Sharp Electronics Corporation.

The claim charts that accompanied the Complaint specifically identify certain proprietary Google and YouTube products and services operating on Android devices

manufactured by each of the Respondents as allegedly infringing or allegedly providing a portion of the infringing functionality of various patent claims. Specifically, Google Maps and Google Latitude were identified in the claim charts for U.S. Patent 6,618,593. Google Play Music was expressly identified in the claim charts for U.S. Patent Nos. 8,045,952 and 8,050,652. YouTube was expressly identified in claim charts for U.S. Patent Nos. 8,028,323, 8,214,873, and 8,230,099.

In addition, Black Hills has served subpoenas on both Google and its wholly-owned subsidiary YouTube, copies of which are attached as Exhibits 1 and 2. The subpoena to Google defines “Google Device Locator Applications” as “software applications that enable device users to identify and locate on a map, via global positioning system data, other wireless communication devices. Device Locator Applications include, without limitation, Google Latitude, AT&T Family Map, and all other reasonably similar applications.” Ex. 1 at 4. The subpoena defines “Google Media Sharing Applications” as “YouTube and applications for managing and sharing digital media and other network connected devices including music sharing applications, such as Google Play Music and reasonably similar applications, as well as, second screen and DIAL video sharing applications, and other reasonably similar applications.” *Id.* The subpoena to YouTube, Google’s wholly owned subsidiary, defines “YouTube Products” as “YouTube software used in conjunction with respondents’ devices including, but not limited to, YouTube applications and services and YouTube discovery and launch (‘DIAL’), second screen, or remote control functionality.” Ex. 2 at 5.

## **II. ARGUMENT**

### **A. Legal Standard**

The Commission's rules expressly provide for a third party to intervene in a pending investigation. Rule 210.19; *Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, Inv. No. 337-TA-604, Order No. 7 (July 25, 2007) ("The Commission generally follows the Federal Rules of Civil Procedure in determining whether intervention in a particular matter is appropriate.")<sup>2</sup> The Commission evaluates the following factors in determining whether intervention is appropriate: (1) was the motion timely; (2) does the moving party have "an interest relating to the property or transaction which is the subject of the action;" (3) is the moving party "so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest;" and (4) is the moving party "not adequately represented by existing parties." *Id.*

### **B. GOOGLE SATISFIES THE STANDARD FOR INTERVENTION**

#### **1. Google's Motion is Timely**

A motion to intervene is timely if filed at a "relatively early" stage of the investigation. *Id.* Google's motion is timely, as this investigation was only instituted on June 18, 2013, a little more than five weeks ago, and the preliminary hearing before the ALJ will not occur until August 6, 2013. *See Certain Portable Electronic Communication Devices, Including Mobile Phones and Components Thereof*, Inv.

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<sup>2</sup> Federal Rule of Civil Procedure 24 provides: "On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."



No. 337-TA-885, Order No. 5 (July 16, 2013) (motion timely when filed “within weeks of the institution of the investigation”); *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-424, Order No. 15 (Nov. 19, 1999) (granting motion to intervene filed less than ninety days after publication of the notice of investigation and prior to the initial conference).

## **2. Google Has a Compelling Interest in This Investigation**

Google has a compelling interest in this investigation as a result of Complainant’s assertion that the alleged infringement is based, in part, on Respondents’ devices and their use of proprietary Google products and services, including Google Play Music, Google Maps/Latitude, and YouTube. *See Certain Portable Electronic Communication Devices, Including Mobile Phones and Components Thereof*, Inv. No. 337-TA-885, Order No. 5 (finding Google established that it has a substantial interest due to the alleged infringement of HTC devices that run Google products or services); *Certain Electronic Devices, Including Mobile Phones and Tablet Computers, and Components Thereof*, Inv. No. 337-TA-847, Order No. 3 (Aug. 3, 2012) (finding Google established that it has a substantial interest because “proprietary Android applications developed by Google and imbedded [*sic*] in the accused HTC devices form the basis of Nokia’s infringement allegations”); *see also, Ancora Tech., Inc. v. Toshiba Am. Info. Sys., Inc.*, 2008 WL 4326788 at \*1 (C.D. Cal. Sept. 22, 2008) (granting motion to intervene where “[a]pplicant has a significantly protectable interest because the Defendants are important OEM customers who make and sell computer products equipped with Applicant’s software, and Plaintiff alleges patent infringement based on the Defendants’ use of

Applicant's software and technology in connection with making and selling computer products").

Google also has a business interest in the continued importation and sale of Respondents' accused products that utilize Google proprietary products and services. Google has invested substantial resources in developing and supporting these products and services and has a strong interest in assuring that Respondents can continue to utilize these products and services by importing their products into the United States. *See Certain Garage Door Operators*, Inv. No. 337-TA-459, Order No. 5 (Oct. 1, 2001) (party's status as "a designer, manufacturer and supplier" of a principal component of "the accused device renders its interest in this investigation substantial").

### **3. Google's Substantial Interests Are Not Adequately Protected by the Respondents**

In two prior investigations involving Google's proprietary products and services, with closely analogous facts, the Commission found that the respondents could not adequately protect Google's interests. *See Certain Electronic Devices, Including Mobile Phones and Tablet Computers, and Components Thereof*, Inv. No. 337-TA-847, Order No. 3 (Aug. 3, 2012) ("I find that HTC, as the accused device manufacturer, but not the developer of the Android applications embedded in those devices, does not adequately represent Google's interests."); *Certain Portable Electronic Communication Devices, Including Mobile Phones and Components Thereof*, Inv. No. 337-TA-885, Order No. 5 ("The ALJ finds that Google's interests are not adequately protected by existing parties"). The same holds true in this investigation.

Moreover, Google's products and services are not the only third-party products and services that are alleged to infringe the asserted patents, and Respondents' interests will be more focused on their own accused products as opposed to Google's proprietary products and services. *See Certain Personal Computer with Memory Management Information Stored in External Memory*, Inv. No. 337-TA-352, (July 15, 1993) ("Cyrix will not be adequately represented by the other parties in this investigation. The Twinhead respondents have an interest in selling personal computers, not necessarily those with Cyrix microprocessors. . . . Cyrix should not be forced to depend on the other parties to litigate issues which will have a very substantial effect on Cyrix's interests.").

### III. CONCLUSION

For all these reasons, Google respectfully requests that its Motion to Intervene in Investigation as a party with full participation rights under Rule 210.19 be granted.

Dated: July 26, 2013

Respectfully submitted,

/s/ Stefani E. Shanberg

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Counsel for GOOGLE INC.

# Exhibit 1

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Before The Honorable David P. Shaw  
Administrative Law Judge

In the Matter of

CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE

Investigation No. 337-TA-882

SUBPOENA DUCES TECUM AND AD TESTIFICANDUM

Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

**TAKE NOTICE:** By authority of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainant Black Hills Media, LLC:

**YOU ARE HEREBY ORDERED** to produce at Mintz Levin Cohn Ferris Glovsky and Popeo PC, 3580 Carmel Mountain Road, Suite 300, San Diego, California, on July 11, 2013, or at such other place and date as agreed upon, all of the Documents and Things in your possession, custody or control listed and described in Attachment A to this subpoena. Such production will be for the purpose of inspection and copying.

If the production of any document listed and described in Attachment A is withheld on the basis of a claim of privilege, each withheld document shall be separately identified in a privileged

document list. The privileged document list must identify each document separately, specifying for each document at least: (1) the date; (2) author(s)/sender(s); (3) recipients(s), including copy recipients; and (4) the general subject matter of the document. The sender(s) and recipients(s) shall be identified by position and entity (corporation or firm, etc.) with which they are employed or associated. If the sender or the recipient is an attorney or a foreign patent agent, he or she shall be identified. The type of privilege claimed must be also stated, together with a certification that all elements of the claimed privilege have been met and have not been waived with respect to each document.

If any of the Documents or Things listed and described in Attachment A are considered “confidential business information,” as that term is defined in the Protective Order attached to this subpoena as Attachment C, such Documents or Things shall be produced subject to the terms and provisions of the Protective Order.

**YOU ARE HEREBY ORDERED** to present yourself for purposes of your deposition upon oral examination at 9:00 a.m. on July 11, 2013 at Mintz Levin Cohn Ferris Glovsky and Popeo PC located at 3580 Carmel Mountain Road, Suite 300, San Diego, California or on such other date, time, and/or location as agreed upon, concerning the subject matter set forth in the topics listed in Attachment B to this subpoena.

The deposition will be taken before a Notary Public or other person authorized to administer oaths and will continue from day-to-day until completed. The deposition may also be recorded by real-time transcription display and videotape.

If any of your testimony is considered “confidential business information,” as that term is defined in the Protective Order attached as Attachment C to this subpoena, such

testimony shall be so designated and treated according to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within **ten (10) days** after the receipt hereof. At the time of filing of any motion concerning this subpoena, two courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of the United States International Trade commission to be affixed at Washington, D.C. on this 25 day of June, 2013.



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The Honorable David P. Shaw  
Administrative Law Judge  
United States International Trade Commission



## DEFINITIONS

1. “Google,” “You,” and “Yours” means Google, Inc. and any of its predecessors in interest, subsidiaries, joint ventures, and other legal entities that are wholly or partially owned or controlled by any of the foregoing entities, either directly or indirectly, and the principals, directors, officers, owners, members, representatives, employees, agents, and consultants of these same entities.
2. “BHM” means Complainant Black Hills Media, LLC.
3. “Document(s)” has the same meaning that it has under Federal Rule of Civil Procedure 34 and Commission Rule 210.30, and includes electronically stored information as specified in Federal Rule of Civil Procedure 34.
4. “Google Device Locator Applications” refers to software applications that enable device users to identify and locate on a map, via global positioning system data, other wireless communications devices. Device Locator Applications include, without limitation, Google Latitude, AT&T Family Map, and all other reasonably similar applications.
5. “Google Media Sharing Applications” refers to YouTube and applications for managing and sharing digital media with other network connected devices including music sharing applications, such as Google Play Music and reasonably similar applications, as well as, second screen and DIAL video sharing applications, and other reasonably similar applications.
6. “Thing(s)” has the broadest meaning allowable under Federal Rule of Civil Procedure 34 and Commission Rule 210.30 and includes any tangible object other than a Document and, without limitation, objects of every kind and nature, as well as prototypes, models, or physical specimens thereof.

7. “Google Products” means Google Device Locator Applications and Google Media Sharing Applications.
8. “Respondents” means: Samsung Electronics Co., Inc., Samsung Electronics America, Inc., Samsung Telecommunications America, L.L.C., LG Electronics, Inc., LG Electronics, U.S.A., Inc., LG Electronics MobileComm U.S.A., Inc., Panasonic Corporation, Panasonic Corporation of America, Toshiba Corporation, Toshiba America Information Systems, Inc., Sharp Corporation, and Sharp Electronics Corporation.
9. “Respondents’ Devices” means: mobile phones, tablets, televisions, Blu-ray players and home theater systems of Respondents.
10. “Third Parties” means any individual or entity excluding Respondents.
11. “Asserted Patents” means, collectively, U.S. Patent Nos. 8,050,652 (“the ‘652 Patent”), 8,045,952 (“the ‘952 Patent”), 6,618,593 (“the ‘593 Patent”), 8,028,323 (“the ‘323 Patent”), 8,214,873 (“the ‘873 Patent”), and 8,230,099 (“the ‘099 Patent”).
12. “Source Code” means human-readable programming language text that defines software, firmware, and/or hardware. Source Code includes, but is not limited to, files containing code in “C”, “C++”, “Java”, and assembly program languages for, but not limited to, DSP and any programmable processors. Source Code further includes but is not limited to “include” files, “make” files, “link” files, “build” files, and other human readable text files used in the generation and/or building of software directly executed on an application processor, baseband processor, micro-controller, or DSP. The term “software” as used above is meant to include but is not limited to operating systems as well as operating system kernels, libraries and DLL’s, compiled programs, applications, and drivers and includes both client based and server-based software. Source Code files also include, but are not limited to files

containing Source Code in VHDL, Verilog, and other Hardware Description Language (“HDL”) formats, including but not limited to, Register Transfer Level (“RTL”) descriptions.

13. The terms “and,” “or,” and “and/or” shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive.
14. All pronouns shall be construed to refer to the masculine, feminine, or neuter gender, in singular or plural, as in each case makes the request more inclusive.

## INSTRUCTIONS

The following instructions apply to each Request for Production unless otherwise explicitly stated.

A. As to any portion of any request that refers to Documents that You are aware of which were at one time within Your possession, custody or control, but which are not now within or subject to Your possession, custody or control, You are directed to identify such Documents in a manner sufficient to describe such Documents for the purpose of preparing and serving a proper subpoena *duces tecum* and to give the name, telephone number, and address of the person last known by You to have been in possession, custody or control of such Documents.

B. All Documents are to be produced in the same file or other organizational environment in which they are maintained. For example, a Document that is part of a file, docket, or other grouping must be produced in the same order or manner of arrangement as the original. Alternatively, as to each Document and thing produced in response hereto, you should identify the request for production in response to which the Document or thing is being produced. *See* Commission Rule 210.30.

C. Documents including electronically stored information shall be produced in their native format with metadata. Documents that exist only on paper may be scanned and produced in .tiff format with load files. Any comment or notation appearing on any Document, and not a part of the original text, is to be considered a separate "Document."

D. Any request to produce a Document "relating to" a particular subject shall be construed in its broadest, most inclusive sense, and shall be considered a request that you produce Documents that relate to, refer to, discuss, summarize, reflect, constitute, contain, embody, pertain

to, mention, consist of, comprise, show, comment on, evidence, describe, or in any other way concern the subject matter.

E. If a Document is in a language other than English and an English translation exists, provide both Documents.

F. State, for each request, whether or not there exists any Documents within the scope of the request and whether any such Documents are within Your possession, custody, or control.

G. If you are aware that a Document or group of Documents once existed but has been destroyed, this should be stated, and it should be also stated who destroyed it, when, and why it was destroyed, and the circumstances under which it was destroyed.

H. If no Documents are responsive to a particular request, you are to state that no responsive Documents exist.

## ATTACHMENT A

### Requests for Document Production

1. Documents evidencing all past and current versions of the Google Products and the changes made from one successive version to the next.
2. All Documents evidencing which of Respondents' Devices the Google Products are loaded on, including when and by whom they are loaded (e.g., prior to importation, after importation, automatically upon first use of Respondents' Devices, by the end user), and the approximate number of Google Products that have been installed on each model of Respondents' Devices.
3. All Documents describing the structure, function, and operation of all Google Products, including but not limited to all programming guides, developer documentation including commands, requests, status, data formats and protocols for communications to and from Google servers, Documents relating to application programming interfaces ("API"), Documents relating to native applications of the Google Products, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
4. All Source Code relating to the Google Products, including but not limited to all Google Products in first screen or second screen applications, on servers, in databases, or in any location where Source Code relating to the Google Products resides.
5. All Documents and Source Code relating to the steps and resources employed to cause the Google Media Sharing Applications to receive and communicate a user's request for music and to receive and process data identifying one or more songs for playback, including but not limited to Documents and Source Code relating to (a) receiving and processing the user's request for music; (b) communicating the user's request to a server; (c) receiving data identifying one or more songs for playback; and (d) playing back the songs.
6. All Documents and Source code relating to any local storage on Respondents' Devices of songs, or portions of songs, obtained from Google's servers.
7. All Documents, Source Code and communications You have provided to or received from Respondents relating to the Google Products.
8. All Documents relating to the combination of Google Products with Respondents' Devices, including but not limited to any advertisements, instructions, or promotion of Google Products by You, Respondents or You and Respondents together.
9. All Documents, communications, or protocols relating to the testing of the Google Products in conjunction with Respondents' Devices, whether performed by You, by Respondents, or by Third Parties, such as mobile carriers.



10. All indemnity requests received by You relating to this investigation, including any indemnity requests received from Respondents.
11. All Documents that relate to payments or compensation exchanged between You and Respondents relating to Google Products.
12. All Documents that relate to Charles Drutman, Darlene Drutman, Andrew Egendorf, Norton Greenfeld, Eugene Pettinelli, Roving Radar, Safi Qureshey, Dan Sheppard, AudioRamp or the Asserted Patents and their infringement, non-infringement, validity, invalidity, enforceability or unenforceability, or Your knowledge of the Asserted Patents.
13. Documents sufficient to show Google's corporate structure and identification of its officers.
14. All server logs, data and summaries regarding the successful matching of mobile devices using the Google Device Locator Applications, including the identity and brand of mobile devices that have been matched.
15. Information (including server logs) sufficient to show that the Google Device Locator Applications provided a handset manufactured by LG with the location of another LG handset.
16. Information (including server logs) sufficient to show that the Google Device Locator Applications provided a handset manufactured by Samsung with the location of another Samsung handset.
17. Information (including server logs) sufficient to show that the Google Device Locator Applications provided a handset manufactured by LG with the location of a Samsung handset.
18. Information (including server logs) sufficient to show that the Google Device Locator Applications provided a handset manufactured by Samsung with the location of an LG handset.
19. All Documents and Things relating to the structure, function, and operation of the Discovery and Launch Protocol ("DIAL"), including all versions of the DIAL protocol specification, programming guides, user manuals, user guides, hardware specifications, software specifications, technical presentations, engineering presentations, marketing presentations, and marketing studies.
20. All current and former versions of the DIAL Registry.
21. All Source Code relating to DIAL, including all implementations of DIAL in conjunction with Respondents' Devices in first screen applications and second screen applications.
22. All Documents and Source Code Google provides to Respondents relating to DIAL.

23. All Documents and Things relating to the use of DIAL by second screen devices to discover and launch applications on first screen devices, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, marketing presentations, and marketing studies.



## ATTACHMENT B

### Deposition Topics

1. All Documents identified in Attachment A.
2. All efforts to collect Documents identified in Attachment A.
3. All past and current versions of the Google Products and the changes made from one successive version to the next.
4. Which of Respondents' Devices the Google Products are loaded on, including when and by whom they are loaded, and the approximate number of Google Products that have been installed on each model of Respondents' Devices.
5. The structure, function, and operation of all Google Products.
6. Source Code relating to the Google Products.
7. Documents, Source Code and communications You have provided to or received from Respondents relating to the Google Products.
8. The combination of Google Products with Respondents' Devices, including but not limited to any advertisements, instructions, promotion of Google Products by You, Respondents or You and Respondents together.
9. The testing of the Google Products in conjunction with Respondents' Devices, whether performed by You, by Respondents, or by Third Parties, such as, mobile carriers.
10. Indemnity requests received by You relating to this investigation.
11. Payments or compensation exchanged between You and Respondents relating to Google Products.
12. Charles Drutman, Darlene Drutman, Andrew Egendorf, Norton Greenfeld, Eugene Pettinelli, Roving Radar, Safi Qureshey, Dan Sheppard, AudioRamp, the Asserted Patents and their infringement, non-infringement, validity, invalidity, enforceability or unenforceability and Your knowledge of the Asserted Patents.
13. Google's corporate structure, including without limitation information about officers or employees.
14. The identity of servers and databases that are used in connection with the Google Products.

15. Records generated by the use of the Google Device Locator Applications, including records sufficient to establish use of the Google Device Locator Applications on handsets of the Respondents which have been sold in the United States.
16. All server logs, data and summaries regarding the successful matching of mobile devices using the Google Device Locator Applications.
17. The structure, function, and operation of the Discovery and Launch Protocol (“DIAL”).
18. The DIAL Registry.
19. The Source Code relating to DIAL.
20. Documents and Source Code YouTube provides Respondents relating to DIAL.
21. The use of DIAL by second screen devices to discover and launch of applications on first screen devices.

ATTACHMENT C

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE

Inv. No. 337-TA-882

Order No. 1: PROTECTIVE ORDER

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. 210.5;

IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which has not been made public and which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, the disclosure of which information is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the

information was obtained, unless the Commission is required by law to disclose such information.

2. (a) Any information submitted, in prehearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: “[supplier’s name] CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER,” or a comparable notice. During the prehearing phase of this investigation, such information whether submitted in writing or in oral testimony shall be disclosed only *in camera* before the Commission or the administrative law judge.

(b) The administrative law judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the administrative law judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.

3. In the absence of written permission from the supplier or an order by the Commission or the administrative law judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such

documents or information and necessary stenographic and clerical personnel thereof; (iii) technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of certain digital media devices, including televisions, blu-ray disc players, home theater systems, tablets and mobile phones, components thereof and associated software, which are the subject of this investigation); (iv) the Commission, the administrative law judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.<sup>1</sup>

4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i) and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.

5. If the Commission or the administrative law judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the

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<sup>1</sup> See Commission Administrative Order 97-06 (Feb. 4, 1997).



conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Commission or the administrative law judge finds that the information is not confidential business information as defined in paragraph 1 hereof.

6. Any confidential business information submitted to the Commission or the administrative law judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them “[supplier’s name], CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” Before a court reporter receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.

7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the administrative law judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

8. The Commission, the administrative law judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the administrative law judge.

9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the administrative law judge that information designated as confidential, is no longer confidential, the Commission, the administrative law judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access of such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to declassify or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the administrative law judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

10. If while an investigation is before the administrative law judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2, disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject



information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation, such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the administrative law judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the administrative law judge who will rule upon the matter. The administrative law judge may *sua sponte* question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.

11. No less than 10 days (or any other period of time designated by the administrative law judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the administrative law judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the administrative law judge. The terms of this paragraph shall be inapplicable

to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the administrative law judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the administrative law judge concerning the issue of the status of confidential business information.

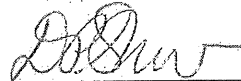
14. Upon final termination of this investigation, each party that is subject to this order shall assemble and return to the supplier all items containing confidential business information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the administrative law judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be transmitted to a district court pursuant to Commission Rule 210.5(e).

15. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be considered a "supplier" as that term is used in the context of this order.

16. Each nonparty supplier shall be provided a copy of this order by the party seeking information from said supplier.

17. The Secretary shall serve a copy of this order upon all parties.



---

David P. Shaw  
Administrative Law Judge

Issued: June 19, 2013

Attachment A

**NONDISCLOSURE AGREEMENT FOR  
REPORTER/STENOGRAPHER/TRANSLATOR**

I, \_\_\_\_\_, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the investigation or hearing in *Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software*, 337-TA-882, except as permitted in the protective order issued in this case. I will not directly or indirectly use, or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the investigation or hearing in this case.

I also affirm that I do not hold any position or official relationship with any of the participants in said investigation.

I am aware that the unauthorized use or conveyance of information as specified above is a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000, imprisonment of up to ten (10) years, or both.

Signed \_\_\_\_\_

Dated \_\_\_\_\_


Firm or affiliation \_\_\_\_\_

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

INV. NO. 337-TA-882

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 1** has been served by hand upon the Commission Investigative Attorney, **Monisha Deka, Esq.**, and the following parties as indicated, on JUN 19 2013



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

<b>FOR COMPLAINANT BLACK HILLS MEDIA, LLC:</b>	
Howard Wisnia <b>MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.</b> 3580 Carmel Mountain Road Suite 300 San Diego, CA 92130	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENTS SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS AMERICA, INC. AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC.:</b>	
Alexander D. Chinoy <b>COVINGTON &amp; BURLING LLP</b> 1201 Pennsylvania Avenue, NW Washington, DC 20004	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE

INV. NO. 337-TA-882

FOR RESPONDENT:	
LG Electronics, Inc. LG Twin Towers 20 Yeouido-dong, Yeogdeungpo-gu Seoul 150-721, Republic of Korea	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
LG Electronics U.S.A., Inc. 1000 Sylvan Avenue Englewood Cliffs, New Jersey 07632	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
LG Electronics MobileComm U.S.A., Inc. 10101 Old Grove Road San Diego, California 92131	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
Panasonic Corporation 10006 Oaza Kodoma Kadoma-shi, Osaka 571-8501 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____



**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

INV. NO. 337-TA-882

FOR RESPONDENT:	
Panasonic Corporation of North America One Panasonic Way Secaucus, New Jersey 07904	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
Toshiba Corporation 1-1, Shibaura 1-Chome Minato-ku, Tokyo 105-8001 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
Toshiba America Information Systems, Inc. 9740 Irvine Boulevard Irvine, California 92618	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

FOR RESPONDENT:	
Sharp Corporation 22-22 Nagaike-cho Abenko-ku, Osaka 545-8522 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

INV. NO. 337-TA-882

FOR RESPONDENT:	
Sharp Electronics Corporation 1 Sharp Plaza Mahwah, New Jersey 07495	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**PUBLIC MAILING LIST**

Lori Hofer, Library Services <b>LEXIS-NEXIS</b> 9473 Springboro Pike Miamisburg, OH 45342	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
Kenneth Clair <b>Thomson West</b> 1100 13 <sup>th</sup> Street, NW, Suite 200 Washington, DC 20005	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Before The Honorable David P. Shaw  
Administrative Law Judge

In the Matter of

CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE

Investigation No. 337-TA-882

**APPLICATION FOR ISSUANCE OF SUBPOENA *DUCES TECUM***  
**AND SUBPOENA *AD TESTIFICANDUM* TO GOOGLE, INC.**

Complainant Black Hills Media, LLC (“BHM”), pursuant to Commission Rule 210.32 applies for issuance of the attached subpoena *duces tecum* and *ad testificandum* *In the Matter of Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software*, Investigation No. 337-TA-882 (“Investigation”) to:

Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

The subpoena requires Google, Inc. (“Google”) to produce Documents described in Attachment A to the subpoena on July 11, 2013, or on such other date as agreed upon by BHM and Google, at the offices of BHM’s counsel, Mintz Levin Cohn Ferris Glovsky and Popeo PC, in San Diego, California, or at such other location agreed upon by BHM and Google. The subpoena further requires Google to appear and testify at a deposition regarding topics identified in Attachment B to the Subpoena on July 11, 2013, or on such other date as agreed upon by BHM and Google, at the

offices of Mintz Levin Cohn Ferris Glovsky and Popeo PC located at 3580 Carmel Mountain Road, Suite 300, San Diego, California, or at such other location as agreed upon by BHM and Google.

The discovery BHM seeks from Google is relevant to BHM's infringement allegations as to all six Asserted Patents in this Investigation. In particular, upon information and belief, Google is a supplier of applications that are incorporated into devices manufactured by the Respondents, which have been accused of infringement in this Investigation. Through this subpoena, BHM seeks Google documentation and deposition testimony regarding the structure, function, operation, and implementation of the Google applications in the Respondents' products. BHM has tailored the discovery requests narrowly to minimize the burden required for Google to comply with the subpoena. BHM will meet and confer with Google to minimize the burden imposed on Google by the subpoena.

If issued, BHM will serve the subpoena on Google via overnight mail. Further BHM will serve a copy of the subpoena on the Staff, and Respondents, and two copies on the office of the Administrative Law Judge. Accordingly, for the reasons set forth above, BHM respectfully requests that the Administrative Law Judge grant this application and issue the attached subpoena to Google.

DATED: June 24, 2013

/s/ H. Joseph Hameline

H. Joseph Hameline  
hjhameline@mintz.com  
Matthew D. Durell  
mdurell@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, MA 02111  
Telephone 617-542-6000

Howard Wisnia  
hnwisnia@mintz.com  
James Conley  
jconley@mintz.com  
John Giust  
jgiust@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
3580 Carmel Mountain Road  
Suite 300  
San Diego, CA 92130  
Telephone: 858-314-1500

Peter F. Snell  
psnell@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
Chrysler Center  
666 Third Avenue  
New York, NY 10017  
Telephone: 212-935-3000

*Counsel for Complainant  
Black Hills Media, LLC*

**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

**CERTIFICATE OF SERVICE**

I, Megan A. De Renzis, certify that on June 27, 2013 a copy of the foregoing document was served upon the following parties as indicated:

<p>Attention: Legal Department Google, Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Electronic Mail</p>
<p>Monisha Deka Investigative Attorney Office of Unfair Imports Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW Washington, DC 20436 Tel: 202.205.3180</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail monisha.deka@usitc.gov</p>
<p><i>Counsel for Respondents Samsung Electronics Co. Ltd, Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC</i></p> <p>Alexander D. Chinoy COVINGTON &amp; BURLING LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004 Tel: 202.662.5040</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail Samsung-Blackhills@cov.com</p>
<p><i>Counsel for Respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics MobileComm U.S.A., Inc.</i></p> <p>Elizabeth A. Niemeyer Doris Johnson Hines Houtan K. Esfanani FINNEGAN, HENDERSON, FARABOW, GARRETT &amp; DUNNER, L.L.P. 901 New York Avenue, NW Washington, DC 20001 Tel: 202.408.4000</p> <p>Andrew C. Sonu FINNEGAN, HENDERSON, FARABOW, GARRETT &amp; DUNNER, L.L.P.</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail LG-882@finnegan.com</p>



**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

<p>Two Freedom Square 11955 Freedom Drive Reston, VA 20190 Tel: 571.203.2700</p>	
<p><i>Counsel for Respondents Panasonic Corporation, and Panasonic Corporation of North America</i></p> <p>Daniel R. Foster MCDERMOTT WILL &amp; EMERY LLP 4 Park Plaza, Suite 1700 Irvine, CA 92614-2559 Tel: 949.757.7103</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail <a href="mailto:Panasonic-BlackHills@mwe.com">Panasonic-BlackHills@mwe.com</a></p>
<p><i>Counsel for Respondents Toshiba Corporation, and Toshiba America Information Systems, Inc.</i></p> <p>Paul F. Brinkman QUINN EMANUEL URQUHART &amp; SULLIVAN LLP 1299 Pennsylvania Avenue, NW, Suite 825 Washington, DC 20004 Tel: 202.538.8102</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail <a href="mailto:Toshiba882@quinnemanuel.com">Toshiba882@quinnemanuel.com</a></p>
<p><i>Counsel for Respondents Sharp Corporation, and Sharp Electronics Corporation</i></p> <p>Benjamin Hershkowitz GIBSON, DUNN &amp; CRUTCHER LLP 200 Park Avenue New York, NY 10166 Tel: 212.315.2410</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail <a href="mailto:BHM-SharpGDC@gibsondunn.com">BHM-SharpGDC@gibsondunn.com</a></p>

**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater  
Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

*Megan A. De Renzis*

---

Megan A. De Renzis  
Legal Specialist  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Direct: (617) 348-4893  
Fax: (617) 542-2241

19387792v.1

## Exhibit 2

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Before The Honorable David P. Shaw  
Administrative Law Judge

In the Matter of

CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE

Investigation No. 337-TA-882

**SUBPOENA DUCES TECUM AND AD TESTIFICANDUM**

YouTube, LLC  
901 Cherry Avenue  
San Bruno, CA 94066

**TAKE NOTICE:** By authority of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by Complainant Black Hills Media, LLC.:

**YOU ARE HEREBY ORDERED** to produce at Mintz, Levin, Cohen Ferris, Glovsky and Popeo, P.C., 3580 Carmel Mountain Road, Suite 300, San Diego, California, on July 11, 2013, or at such other place and date as agreed upon, all of the Documents and Things in Your possession, custody or control listed and described in Attachment A to this subpoena. Such production will be for the purpose of inspection and copying.

If the production of any Document listed and described in Attachment A is withheld on the basis of a claim of privilege, each withheld Document shall be separately identified in a



privileged Document list. The privileged Document list must identify each Document separately, specifying for each Document at least: (1) the date; (2) author(s)/sender(s); (3) recipients(s), including copy recipients; and (4) the general subject matter of the Document. The sender(s) and recipients(s) shall be identified by position and entity (corporation or firm, etc.) with which they are employed or associated. If the sender or the recipient is an attorney or a foreign patent agent, he or she shall be identified. The type of privilege claimed must be also stated, together with a certification that all elements of the claimed privilege have been met and have not been waived with respect to each Document.

If any of the Documents or Things listed and described in Attachment A are considered “confidential business information,” as that term is defined in the Protective Order attached to this subpoena as Attachment C, such Documents or Things shall be produced subject to the terms and provisions of the Protective Order.

**YOU ARE HEREBY ORDERED** to present Yourself for purposes of Your deposition upon oral examination at 9:00 a.m. on July 11, 2013 at Mintz, Levin, Cohen Ferris, Glovsky and Popeo, P.C., 3580 Carmel Mountain Road, Suite 300, San Diego, California or on such other date, time, and/or location as agreed upon, concerning the subject matter set forth in the topics listed in Attachment B to this subpoena.

The deposition will be taken before a Notary Public or other person authorized to administer oaths and will continue from day to day until completed. The deposition may also be recorded by real-time transcription display and videotape.

If any of Your testimony is considered “confidential business information,” as that term is defined in the Protective Order attached as Attachment C to this subpoena,

such testimony shall be so designated and treated according to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within **ten (10) days** after the receipt hereof. At the time of filing of any motion concerning this subpoena, two courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of the United States International Trade commission to be affixed at Washington, D.C. on this 28 day of June, 2013.



---

The Honorable David P. Shaw  
Administrative Law Judge  
United States International Trade Commission

## **DEFINITIONS**

1. “YouTube,” ”You,” and “Yours” means YouTube, LLC, and any of its predecessors in interest, subsidiaries, joint ventures, and other legal entities that are wholly or partially owned or controlled by any of the foregoing entities, either directly or indirectly, and the principals, directors, officers, owners, members, representatives, employees, agents, and consultants of these same entities.

2. “BHM” means Complainant Black Hills Media, LLC.

3. “Document(s)” has the same meaning that it has under Federal Rule of Civil Procedure 34 and Commission Rule 210.30, and includes electronically stored information as specified in Federal Rule of Civil Procedure 34.

4. “Thing(s)” has the broadest meaning allowable under Federal Rule of Civil Procedure 34 and Commission Rule 210.30 and includes any tangible object other than a Document and, without limitation, objects of every kind and nature, as well as prototypes, models, or physical specimens thereof.

5. “Respondents” means: Samsung Electronics Co., Inc., Samsung Electronics America, Inc., Samsung Telecommunications America, L.L.C., LG Electronics, Inc., LG Electronics, U.S.A., Inc., LG Electronics MobileComm U.S.A., Inc., Panasonic Corporation, Panasonic Corporation of America, Toshiba Corporation, Toshiba America Information Systems, Inc., Sharp Corporation, and Sharp Electronics Corporation.

6. “Respondents’ Devices” means: mobile phones, tablets, televisions, Blu-ray players and home theater systems of Respondents.

7. “Third Parties” means any individual or entity excluding Respondents.

8. “Asserted Patents” means, collectively, U.S. Patent Nos. 8,050,652 (“the ‘652 Patent”), 8,045,952 (“the ‘952 Patent”), 6,618,593 (“the ‘593 Patent”), 8,028,323 (“the ‘323 Patent”), 8,214,873 (“the ‘873 Patent”), and 8,230,099 (“the ‘099 Patent”).

9. “YouTube Products” means YouTube software used in conjunction with Respondents’ Devices including, but not limited to, YouTube applications and services and YouTube discovery and launch (“DIAL”), second screen, or remote control functionality.

10. “Source Code” means human-readable programming language text that defines software, firmware, and/or hardware. Source Code includes, but is not limited to, files containing code in “C”, “C++”, “Java”, and assembly program languages for, but not limited to, DSP and any programmable processors. Source Code further includes but is not limited to “include” files, “make” files, “link” files, “build” files, and other human readable text files used in the generation and/or building of software directly executed on an application processor, baseband processor, micro-controller, or DSP. The term “software” as used above is meant to include but is not limited to operating systems as well as operating system kernels, libraries and DLL’s, compiled programs, applications, and drivers and includes both client based and server-based software. Source Code files also include, but are not limited to files containing Source Code in VHDL, Verilog, and other Hardware Description Language (“HDL”) formats, including but not limited to, Register Transfer Level (“RTL”) descriptions.

11. The terms “and,” “or,” and “and/or” shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive.

12. All pronouns shall be construed to refer to the masculine, feminine, or neuter gender, in singular or plural, as in each case makes the request more inclusive.

## INSTRUCTIONS

The following instructions apply to each Request for Production unless otherwise explicitly stated.

A. As to any portion of any request that refers to Documents that You are aware of which were at one time within Your possession, custody or control, but which are not now within or subject to Your possession, custody or control, You are directed to identify such Documents in a manner sufficient to describe such Documents for the purpose of preparing and serving a proper subpoena *duces tecum* and to give the name, telephone number, and address of the person last known by You to have been in possession, custody or control of such Documents.

B. All Documents are to be produced in the same file or other organizational environment in which they are maintained. For example, a Document that is part of a file, docket, or other grouping must be produced in the same order or manner of arrangement as the original. Alternatively, as to each Document and thing produced in response hereto, you should identify the request for production in response to which the Document or thing is being produced. *See* Commission Rule 210.30.

C. Documents including electronically stored information shall be produced in their native format with metadata. Documents that exist only on paper may be scanned and produced in .tiff format with load files. Any comment or notation appearing on any Document, and not a part of the original text, is to be considered a separate “Document.”

D. Any request to produce a Document “relating to” a particular subject shall be construed in its broadest, most inclusive sense, and shall be considered a request that you produce Documents that relate to, refer to, discuss, summarize, reflect, constitute, contain,

embody, pertain to, mention, consist of, comprise, show, comment on, evidence, describe, or in any other way concern the subject matter.

E. If a Document is in a language other than English and an English translation exists, provide both Documents.

F. State, for each request, whether or not there exists any Documents within the scope of the request and whether any such Documents are within Your possession, custody, or control.

G. If you are aware that a Document or group of Documents once existed but has been destroyed, this should be stated, and it should be also stated who destroyed it, when, and why it was destroyed, and the circumstances under which it was destroyed.

H. If no Documents are responsive to a particular request, you are to state that no responsive Documents exist.

## ATTACHMENT A

### **Requests for Document Production**

1. All Documents and Things describing the structure, function, and operation of all YouTube Products, including programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
2. All Source Code relating to YouTube Products, whether in a first or second screen application, mobile or non-mobile, on a Respondents' Device or on YouTube servers.
3. All Documents and Source Code YouTube provides Respondents relating to YouTube Products.
4. All Documents and Things relating to the reception of a playlist by a YouTube Product, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
5. All Documents and Things relating to the display and/or selection of a device identifier on a YouTube Product, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
6. All Documents and Things relating to the presentation of a playlist by a YouTube Product, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
7. All Documents and Things relating to the selection of media by a user of a YouTube Product, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
8. All Documents and Things relating to the playback of media on a YouTube Product, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, FAQs, marketing presentations, and marketing studies.
9. All Documents and Things relating to the structure, function, and operation of the Discovery and Launch Protocol ("DIAL"), including all versions of the DIAL protocol specification, programming guides, user manuals, user guides, hardware specifications, software specifications, technical presentations, engineering presentations, marketing presentations, and marketing studies.

10. All current and former versions of the DIAL Registry.
11. All Source Code relating to DIAL, including all implementations of DIAL in conjunction with Respondents' Devices in first screen applications and second screen applications.
12. All Documents and Source Code YouTube provides to Respondents relating to DIAL.
13. All Documents and Things relating to the use of DIAL by second screen devices to discover and launch applications on first screen devices, including all programming guides, user manuals, user guides, hardware specifications, software specifications, feature specifications, technical presentations, engineering presentations, marketing presentations, and marketing studies.
14. All indemnity requests received by You relating to this investigation, including any indemnity requests received from Respondents.



## **ATTACHMENT B**

### **Deposition Topics**

1. All Documents identified in Attachment A.
2. All efforts to collect Documents identified in Attachment A.
3. The structure, function, and operation of all YouTube Products.
4. The Source Code relating to the YouTube Products.
5. Documents and Source Code YouTube provides Respondents relating to YouTube Products.
6. The display and/or selection of a device identifier on a YouTube Product
7. The reception of a playlist by a YouTube Product.
8. The presentation of a playlist by a YouTube Product.
9. The selection of media by a user of a YouTube Product.
10. The playback of media on a YouTube Product.
11. The structure, function, and operation of the Discovery and Launch Protocol (“DIAL”).
12. The DIAL Registry.
13. The Source Code relating to DIAL.
14. Documents and Source Code YouTube provides Respondents relating to DIAL.
15. The use of DIAL by second screen devices to discover and launch of applications on first screen devices.
16. Indemnity requests received by You relating to this investigation.

**ATTACHMENT C**

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

**In the Matter of**

**CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE**

**Inv. No. 337-TA-882**

**Order No. 1: PROTECTIVE ORDER**

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information, as such terms are used in the Commission's Rules, 19 C.F.R. 210.5;

IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which has not been made public and which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, the disclosure of which information is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the

information was obtained, unless the Commission is required by law to disclose such information.

2. (a) Any information submitted, in prehearing discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to order, in this investigation, which is asserted by a supplier to contain or constitute confidential business information shall be so designated by such supplier in writing, or orally at a deposition, conference or hearing, and shall be segregated from other information being submitted. Documents shall be clearly and prominently marked on their face with the legend: “[supplier’s name] CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER,” or a comparable notice. During the prehearing phase of this investigation, such information whether submitted in writing or in oral testimony shall be disclosed only *in camera* before the Commission or the administrative law judge.

(b) The administrative law judge or the Commission may determine that information alleged to be confidential is not confidential, or that its disclosure is necessary for the proper disposition of the proceeding, before, during or after the close of a hearing herein. If such a determination is made by the administrative law judge or the Commission, opportunity shall be provided to the supplier of such information to argue its confidentiality prior to the time of such ruling.

3. In the absence of written permission from the supplier or an order by the Commission or the administrative law judge, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this investigation, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such

documents or information and necessary stenographic and clerical personnel thereof; (iii) technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of certain digital media devices, including televisions, blu-ray disc players, home theater systems, tablets and mobile phones, components thereof and associated software, which are the subject of this investigation); (iv) the Commission, the administrative law judge, the Commission staff, and personnel of any governmental agency as authorized by the Commission; and (v) the Commission, its employees, and contract personnel who are acting in the capacity of Commission employees, for developing or maintaining the records of this investigation or related proceedings for which this information is submitted, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.<sup>1</sup>

4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(i) and (iii) unless he or she shall have first read this order and shall have agreed, by letter filed with the Secretary of this Commission: (i) to be bound by the terms thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 3; and (iii) to utilize such confidential business information solely for purposes of this investigation.

5. If the Commission or the administrative law judge orders, or if the supplier and all parties to the investigation agree, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the

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<sup>1</sup> See Commission Administrative Order 97-06 (Feb. 4, 1997).

conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Commission or the administrative law judge finds that the information is not confidential business information as defined in paragraph 1 hereof.

6. Any confidential business information submitted to the Commission or the administrative law judge in connection with a motion or other proceeding within the purview of this investigation shall be submitted under seal pursuant to paragraph 2 above. Any portion of a transcript in connection with this investigation containing any confidential business information submitted pursuant to paragraph 2 above shall be bound separately and filed under seal. When any confidential business information submitted in accordance with paragraph 2 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them “[supplier’s name], CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” Before a court reporter receives any such information, he or she shall have first read this order and shall have agreed in writing to be bound by the terms thereof. Alternatively, he or she shall sign the agreement included as Attachment A hereto. Copies of each such signed agreement shall be provided to the supplier of such confidential business information and the Secretary of the Commission.

7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Commission or the administrative law judge rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

8. The Commission, the administrative law judge, and the Commission investigative attorney acknowledge that any document or information submitted as confidential business information pursuant to paragraph 2 above is to be treated as such within the meaning of 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905, subject to a contrary ruling, after hearing, by the Commission or its Freedom of Information Act Officer, or the administrative law judge.

9. Unless a designation of confidentiality has been withdrawn, or a determination has been made by the Commission or the administrative law judge that information designated as confidential, is no longer confidential, the Commission, the administrative law judge, and the Commission investigative attorney shall take all necessary and proper steps to preserve the confidentiality of, and to protect each supplier's rights with respect to, any confidential business information designated by the supplier in accordance with paragraph 2 above, including, without limitation: (a) notifying the supplier promptly of (i) any inquiry or request by anyone for the substance of or access of such confidential business information, other than those authorized pursuant to this order, under the Freedom of Information Act, as amended (5 U.S.C. § 552) and (ii) any proposal to declassify or make public any such confidential business information; and (b) providing the supplier at least seven days after receipt of such inquiry or request within which to take action before the Commission, its Freedom of Information Act Officer, or the administrative law judge, or otherwise to preserve the confidentiality of and to protect its rights in, and to, such confidential business information.

10. If while an investigation is before the administrative law judge, a party to this order who is to be a recipient of any business information designated as confidential and submitted in accordance with paragraph 2, disagrees with respect to such a designation, in full or in part, it shall notify the supplier in writing, and they will thereupon confer as to the status of the subject



information proffered within the context of this order. If prior to, or at the time of such a conference, the supplier withdraws its designation of such information as being subject to this order, but nonetheless submits such information for purposes of the investigation, such supplier shall express the withdrawal, in writing, and serve such withdrawal upon all parties and the administrative law judge. If the recipient and supplier are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, any party to this order may raise the issue of the designation of such a status to the administrative law judge who will rule upon the matter. The administrative law judge may *sua sponte* question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.

11. No less than 10 days (or any other period of time designated by the administrative law judge) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and employment history to the supplier. If the supplier objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefor prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the supplier shall submit immediately each objection to the administrative law judge for a ruling. If the investigation is before the Commission the matter shall be submitted to the Commission for resolution. The submission of such confidential business information to such proposed expert shall be withheld pending the ruling of the Commission or the administrative law judge. The terms of this paragraph shall be inapplicable



to experts within the Commission or to experts from other governmental agencies who are consulted with or used by the Commission.

12. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the supplier and the administrative law judge and, without prejudice to other rights and remedies of the supplier, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

13. Nothing in this order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, or the administrative law judge concerning the issue of the status of confidential business information.

14. Upon final termination of this investigation, each party that is subject to this order shall assemble and return to the supplier all items containing confidential business information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business information and certify to the supplier (or his counsel) that such destruction has taken place. This paragraph shall not apply to the Commission, including its investigative attorney, and the administrative law judge, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

Notwithstanding the above paragraph, confidential business information may be transmitted to a district court pursuant to Commission Rule 210.5(c).

15. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this investigation, such a nonparty shall be considered a “supplier” as that term is used in the context of this order.

16. Each nonparty supplier shall be provided a copy of this order by the party seeking information from said supplier.

17. The Secretary shall serve a copy of this order upon all parties.



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David P. Shaw  
Administrative Law Judge

Issued: June 19, 2013

**Attachment A**

**NONDISCLOSURE AGREEMENT FOR  
REPORTER/STENOGRAPHER/TRANSLATOR**

I, \_\_\_\_\_, do solemnly swear or affirm that I will not divulge any information communicated to me in any confidential portion of the investigation or hearing in *Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software*, 337-TA-882, except as permitted in the protective order issued in this case. I will not directly or indirectly use, or allow the use of such information for any purpose other than that directly associated with my official duties in this case.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information communicated during any confidential portion of the investigation or hearing in this case.

I also affirm that I do not hold any position or official relationship with any of the participants in said investigation.

I am aware that the unauthorized use or conveyance of information as specified above is a violation of the Federal Criminal Code and punishable by a fine of up to \$10,000, imprisonment of up to ten (10) years, or both.

Signed \_\_\_\_\_

Dated \_\_\_\_\_

Firm or affiliation \_\_\_\_\_

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

**INV. NO. 337-TA-882**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 1** has been served by hand upon the Commission Investigative Attorney, **Monisha Deka, Esq.**, and the following parties as indicated, on JUN 19 2013.



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

<b>FOR COMPLAINANT BLACK HILLS MEDIA, LLC:</b>	
Howard Wisnia <b>MINTZ, LEVIN, COHN, FERRIS,                      GLOVSKY AND POPEO, P.C.</b> 3580 Carmel Mountain Road Suite 300 San Diego, CA 92130	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENTS SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS AMERICA, INC. AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC.:</b>	
Alexander D. Chinoy <b>COVINGTON &amp; BURLING LLP</b> 1201 Pennsylvania Avenue, NW Washington, DC 20004	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

**INV. NO. 337-TA-882**

<b>FOR RESPONDENT:</b>	
LG Electronics, Inc. LG Twin Towers 20 Yeouido-dong, Yeogdeungpo-gu Seoul 150-721, Republic of Korea	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
LG Electronics U.S.A., Inc. 1000 Sylvan Avenue Englewood Cliffs, New Jersey 07632	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
LG Electronics MobileComm U.S.A., Inc. 10101 Old Grove Road San Diego, California 92131	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
Panasonic Corporation 10006 Oaza Kodoma Kadoma-shi, Osaka 571-8501 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

**INV. NO. 337-TA-882**

<b>FOR RESPONDENT:</b>	
Panasonic Corporation of North America One Panasonic Way Secaucus, New Jersey 07904	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
Toshiba Corporation 1-1, Shibaura 1-Chome Minato-ku, Tokyo 105-8001 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
Toshiba America Information Systems, Inc. 9740 Irvine Boulevard Irvine, California 92618	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

<b>FOR RESPONDENT:</b>	
Sharp Corporation 22-22 Nagaike-cho Abenko-ku, Osaka 545-8522 Japan	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN DIGITAL MEDIA DEVICES, INCLUDING TELEVISIONS, BLU-RAY DISC PLAYERS, HOME THEATER SYSTEMS, TABLETS AND MOBILE PHONES, COMPONENTS THEREOF AND ASSOCIATED SOFTWARE**

**INV. NO. 337-TA-882**

<b>FOR RESPONDENT:</b>	
Sharp Electronics Corporation 1 Sharp Plaza Mahwah, New Jersey 07495	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**PUBLIC MAILING LIST**

Lori Hofer, Library Services <b>LEXIS-NEXIS</b> 9473 Springboro Pike Miamisburg, OH 45342	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
Kenneth Clair <b>Thomson West</b> 1100 13 <sup>th</sup> Street, NW, Suite 200 Washington, DC 20005	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Before The Honorable David P. Shaw  
Administrative Law Judge

In the Matter of

CERTAIN DIGITAL MEDIA DEVICES,  
INCLUDING TELEVISIONS, BLU-RAY  
DISC PLAYERS, HOME THEATER  
SYSTEMS, TABLETS AND MOBILE  
PHONES, COMPONENTS THEREOF  
AND ASSOCIATED SOFTWARE

Investigation No. 337-TA-882

**APPLICATION FOR ISSUANCE OF SUBPOENA *DUCES TECUM***  
**AND SUBPOENA *AD TESTIFICANDUM* TO YOUTUBE, LLC**

Complainant Black Hills Media, LLC (“BHM”), pursuant to Commission Rule 210.32, applies for issuance of the attached subpoena *duces tecum* and *ad testificandum* *In the Matter of Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software*, Investigation No. 337-TA-882 (“Investigation”) to:

YouTube, LLC  
901 Cherry Avenue  
San Bruno, CA 94066

The subpoena requires YouTube, LLC (“YouTube”) to produce Documents described in Attachment A to the subpoena on July 31, 2013, or on such other date as agreed upon by BHM and YouTube, at the offices of BHM’s counsel, Mintz Levin Cohn Ferris Glovsky and Popeo PC, in San Diego, California, or at such other location agreed upon by BHM and YouTube. The subpoena further requires YouTube to appear and testify at a deposition regarding topics identified in Attachment B to the Subpoena on July 31, 2013, or on such other date as agreed



upon by BHM and YouTube, at the offices of Mintz Levin Cohn Ferris Glovsky and Popeo PC located at 3580 Carmel Mountain Road, Suite 300, San Diego, California, or at such other location as agreed upon by BHM and YouTube.

The discovery BHM seeks from YouTube is relevant to BHM's infringement allegations of United States Patents Nos. 8,028,323, 8,214,873, and 8,230,099 asserted in this Investigation. In particular, YouTube is a supplier of applications that are incorporated into devices manufactured by the Respondents, which have been accused of infringement in this Investigation. Through this subpoena, BHM seeks YouTube Documentation and deposition testimony regarding the structure, function, operation, and implementation of the YouTube applications in the Respondents products. BHM has tailored the discovery requests narrowly to minimize the burden required for YouTube to comply with the subpoena. BHM will meet and confer with YouTube to minimize the burden imposed on YouTube by the subpoena.

If issued, BHM will serve the subpoena on YouTube via overnight mail. Further, BHM will serve a copy of the subpoena on the Staff, and Respondents, and two copies on the office of the Administrative Law Judge. Accordingly, for the reasons set forth above, BHM respectfully requests that the Administrative Law Judge grants this application and issues the attached subpoena to YouTube.

DATED: June 24, 2013

/s/ H. Joseph Hameline

---

H. Joseph Hameline  
hjhameline@mintz.com  
Matthew D. Durell  
mdurell@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, MA 02111  
Telephone 617-542-6000

Howard Wisnia  
hnwisnia@mintz.com  
James Conley  
jconley@mintz.com  
John Giust  
jgiust@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
3580 Carmel Mountain Road  
Suite 300  
San Diego, CA 92130  
Telephone: 858-314-1500

Peter F. Snell  
psnell@mintz.com  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
Chrysler Center  
666 Third Avenue  
New York, NY 10017  
Telephone: 212-935-3000

*Counsel for Complainant  
Black Hills Media, LLC*

**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

**CERTIFICATE OF SERVICE**

I, Megan A. De Renzis, certify that on June 27, 2013 a copy of the foregoing document was served upon the following parties as indicated:

<p>Attention: Legal Department YouTube, LLC 901 Cherry Avenue San Bruno, CA 94066</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Electronic Mail</p>
<p>Monisha Deka Investigative Attorney Office of Unfair Imports Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW Washington, DC 20436 Tel: 202.205.3180</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail monisha.deka@usitc.gov</p>
<p><i>Counsel for Respondents Samsung Electronics Co. Ltd, Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC</i></p> <p>Alexander D. Chinoy COVINGTON &amp; BURLING LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004 Tel: 202.662.5040</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail Samsung-Blackhills@cov.com</p>
<p><i>Counsel for Respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics MobileComm U.S.A., Inc.</i></p> <p>Elizabeth A. Niemeyer Doris Johnson Hines Houtan K. Esfanani FINNEGAN, HENDERSON, FARABOW, GARRETT &amp; DUNNER, L.L.P. 901 New York Avenue, NW Washington, DC 20001 Tel: 202.408.4000</p> <p>Andrew C. Sonu FINNEGAN, HENDERSON, FARABOW, GARRETT &amp; DUNNER, L.L.P.</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail LG-882@finnegan.com</p>

**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

<p>Two Freedom Square 11955 Freedom Drive Reston, VA 20190 Tel: 571.203.2700</p>	
<p><b><i>Counsel for Respondents Panasonic Corporation, and Panasonic Corporation of North America</i></b></p> <p>Daniel R. Foster MCDERMOTT WILL &amp; EMERY LLP 4 Park Plaza, Suite 1700 Irvine, CA 92614-2559 Tel: 949.757.7103</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail Panasonic-BlackHills@mwe.com</p>
<p><b><i>Counsel for Respondents Toshiba Corporation, and Toshiba America Information Systems, Inc.</i></b></p> <p>Paul F. Brinkman QUINN EMANUEL URQUHART &amp; SULLIVAN LLP 1299 Pennsylvania Avenue, NW, Suite 825 Washington, DC 20004 Tel: 202.538.8102</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail Toshiba882@quinnemanuel.com</p>
<p><b><i>Counsel for Respondents Sharp Corporation, and Sharp Electronics Corporation</i></b></p> <p>Benjamin Hershkowitz GIBSON, DUNN &amp; CRUTCHER LLP 200 Park Avenue New York, NY 10166 Tel: 212.315.2410</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail <a href="mailto:BHM-SharpGDC@gibsondunn.com">BHM-SharpGDC@gibsondunn.com</a></p>

**Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater  
Systems, Tablets and Mobile Phones, Components Thereof and Associated Software  
Inv. No. 337-TA-882**

*Megan A. De Renzis*

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Megan A. De Renzis  
Legal Specialist  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Direct: (617) 348-4893  
Fax: (617) 542-2241

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**Certain Digital Media Devices, Including Televisions,  
Blu-Ray Disc Players, Home Theater Systems, Tablets and  
Mobile Phones, Components Thereof and Associated Software  
Investigation No. 337-TA-882**

**CERTIFICATE OF SERVICE**

I, Stefani E. Shanberg, hereby certify that on July 26, 2013, copies of the foregoing MOTION TO INTERVENE IN INVESTIGATION AND SUPPORTING MEMORANDUM OF GOOGLE INC. were filed with the Secretary and served upon the following parties as indicated below:

<b>For the U.S. International Trade Commission:</b>	
The Honorable Lisa Barton Acting Secretary to the Commission U.S. International Trade Commission 500 E Street, S.W. Washington, D.C. 20436	Via EDIS E-Filing
The Honorable David P. Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W. Washington, D.C. 20436	Via Federal Express  Via Electronic Mail <i>patricia.chow@usitc.gov</i>
Monisha Deka Investigative Attorney Office of Unfair Imports Investigations U.S. International Trade Commission 500 E Street, S.W. Washington, D.C. 20436	Via Electronic Mail <i>monisha.deka@usitc.gov</i>
<b>For Complainant Black Hills Media, LLC:</b>	
H. Josephine Hameline Matthew D. Durell Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, Massachusetts 02111	Via Electronic Mail <i>BHM-ITC@mintz.com</i>

**Certain Digital Media Devices, Including Televisions,  
Blu-Ray Disc Players, Home Theater Systems, Tablets and  
Mobile Phones, Components Thereof and Associated Software  
Investigation No. 337-TA-882**

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Blu-Ray Disc Players, Home Theater Systems, Tablets and  
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