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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASML NETHERLANDS B.V., EXCELITAS TECHNOLOGIES CORP., AND QIOPTIQ
PHOTONICS GMBH & Co. KG,
Petitioners

v.

ENERGETIQ TECHNOLOGY, INC.,
Patent Owner.

Case IPR2015-01277

**DECLARATION OF JAMES M. DOWD IN SUPPORT OF MOTION
FOR ADMISSION *PRO HAC VICE***

ASML v. Energetiq
IPR2015-01277
ASML 1018

I, James M. Dowd, declare as follows:

1. I was admitted to the Virginia State Bar in 1997 and have been practicing law for over 18 years. During the entire time that I have been practicing law, my practice has focused on the field of intellectual property, and particularly, patent litigation.

2. I am a member in good standing of the Virginia State Bar, the District of Columbia Bar, and the State Bar of California, and am admitted to practice before the Supreme Court of the United States, the U.S. Courts of Appeals for the Federal Circuit, the Ninth Circuit, and the Fourth Circuit, and U.S. District Courts for the Central District of California, the Northern District of California, the Southern District of California, the Eastern District of California, and the Eastern District of Virginia.

3. My Virginia State Bar membership number is 41406. My District of Columbia Bar membership number is 465230. My State Bar of California membership number is 259576.

4. Over the course of my career, I have been counsel in dozens of patent litigations. Several of these cases have concerned Patent Office rules and regulations. For example, I have litigated a number of cases concerning the duty of candor to the Patent Office embodied in 37 C.F.R. § 1.56. Cases that I have been

involved in which implicate this rule include *Energetiq Tech., Inc. v. ASML Netherlands B.V. et al.*, Civ. No.: 1:15-cv-10240-LTS (D. Mass.) (the “Energetiq litigation”, which is a related matter to this proceeding); *Cal. Inst. Of Tech. v. Hughes Communs., Inc.*, Civ. No: 2:13-cv-07245 (C.D. Cal. 2014); *ASML Netherlands B.V. v. Nikon Corp.*, Civ. No.: 3:02-cv-05601 (N.D. Cal. 2004); *SanDisk Corp. v. STMicroelectronics, Inc.*, Civ. No.: 5:06-cv-00194 (N.D. Cal. 2006); *In the Matter of Certain NAND Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-526 (USITC 2006); and *In the Matter of Certain NOR and NAND Flash Memory Devices and Products Containing Same*, Inv. No. 337-TA-560 (USITC 2006). In addition, the Energetiq litigation also concerned Patent Office rules and regulations embodied in 37 C.F.R. § 1.27 regarding the definition and treatment of small entities.

5. I have never been suspended or disbarred from practice before any court or administrative body.

6. I have never had a court or administrative body deny my application for admission to practice.

7. I have never had any sanctions or contempt citations imposed on me by any court or administrative body.

8. I have read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials, as set forth in 37 C.F.R. Part 42.

9. I agree to be subject to the United States Patent and Trademark Office Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).

10. In the last three (3) years, I have not appeared *pro hac vice* in any proceedings before the United States Patent and Trademark Office.

11. Beginning in 2002 and continuing until the present, I have represented ASML Netherlands B.V., a real-party-in-interest in this proceeding, in several patent and patent-related litigations and arbitrations. Patent and patent-related cases in which I represent or have represented ASML Netherlands B.V. or its affiliates include: *Certain Microlithographic Machines and Components Thereof*, Inv. No. 337-TA-468 (USITC 2003), *Nikon Corp. v. ASML Netherlands B.V.*, Civ. No.: 3:02-cv-05081 (N.D. Cal. 2004), and *ASML Netherlands B.V. v. Nikon Corp.*, Civ. No.: 3:02-cv-05601 (N.D. Cal. 2004).

12. I am familiar with the subject matter at issue in this proceeding. I have reviewed U.S. Patent No. 8,309,943 (the "943 patent"), which is being challenged in this proceeding, and I have reviewed the relevant prior art.

Beginning in 2015 and continuing until the present, I have represented Petitioners

ASML Netherlands B.V., Excelitas Technologies Corp., and Qioptiq Photonics GmbH & Co. KG in the Energetiq litigation, which is a related matter to this proceeding. The validity of the '943 patent over the prior art raised in this proceeding is a contested issue in the Energetiq litigation. The validity of other patents in the same patent family as the '943 patent over some of the prior art raised in this proceeding are also contested issues in the Energetiq litigation.

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