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February 22, 2013

The Honorable James L. Robart
United States District Court
Western District of Washington
700 Stewart Street, Suite 14128
Seattle, WA 98101-9906

Re: *Microsoft Corporation* v. *Motorola Mobility, Inc.*
Case No. C10-1823-JLR
Motorola's Submission of Additional Evidence

Dear Judge Robart:

Pursuant to the Court's order of February 14, 2013 (Dkt. 653), General Instrument Corporation ("GI"), Motorola, Inc. and Motorola Mobility LLC (collectively including GI, "Motorola") hereby submit GI's January 11, 2013 acceptance of Microsoft's tendered offer for a "H.264/AVC Patent Cross-License For Germany" together with GI's German counsel's cover letter of January 15, 2013 to provide a status update to the Court. These are the documents discussed at the telephonic conference with the Court on February 12, 2013.

Motorola and GI wish to bring these documents to the Court's attention to keep the Court fully apprised of ongoing proceedings in other jurisdictions concerning H.264 patents.

Ongoing German Proceedings

As this Court is aware, in litigation in Mannheim, Germany, GI accused Microsoft of infringing two European patents relating to video encoding/decoding technology.

In these litigations, Microsoft asserted an "Orange Book" defense—an antitrust defense that derives its name from the Orange-Book-Standard decision of May 6, 2009

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from the German Supreme Court (docket no. KZR 39/06). On December 23, 2011, to support its Orange Book defense under German law, Microsoft made a license offer for the two asserted patents. An amended offer was made on August 31, 2012. This license offer constituted a signed license for current and future sales. *See* Ex. A at 7 (Microsoft date of execution). Under German law, such an offer is called an "Orange Book offer." This offer, which was drafted solely by Microsoft, was still open when GI accepted that offer by executing the license tendered by Microsoft. *See id.* (GI date of execution).

Exhibit A thus reflects in Motorola's view an enforceable license agreement.

Pursuant to German law, Microsoft owes GI the royalties specified in the license agreement as well as past damages to compensate GI for Microsoft's prior infringing use of GI's patents. See Exhibit B.

Past damages will be calculated in further proceedings in the German courts pursuant to German damages law.

Motorola recognizes that Microsoft appears to dispute that the Orange Book license is executed and enforceable in Germany. That issue—as well as past damages—will be decided by the German courts in due course.

Impact on Issues Before This Court

The intent of Motorola's submission is to provide a status update to the Court as to ongoing proceedings—not to advocate that the German proceedings affect this Court's pending decision.

Respectfully,

SUMMIT LAW GROUP PLLC

/s/ Ralph H. Palumbo

Ralph H. Palumbo

Enclosures
cc: All Counsel of Record