

1 GIPSON HOFFMAN & PANCIONE
 A Professional Corporation
 2 GREGORY A. FAYER (State Bar No. 232303)
 GFayer@ghplaw.com
 3 ELLIOT B. GIPSON (State Bar No. 234020)
 EGipson@ghplaw.com
 4 1901 Avenue of the Stars, Suite 1100
 Los Angeles, California 90067-6002
 5 Telephone: (310) 556-4660
 Facsimile: (310) 556-8945

6 Attorneys for Plaintiff
 7 CYBERSitter, LLC d/b/a Solid Oak Software

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

11
 12 CYBERSitter, LLC, a California limited
 liability company, d/b/a Solid Oak Software,

13 Plaintiff,

14
 15 v.

16 The People's Republic of China, a foreign
 state; Zhengzhou Jinhui Computer System
 17 Engineering Ltd., a Chinese corporation;
 Beijing Dazheng Human Language
 18 Technology Academy Ltd., a Chinese
 corporation; Sony Corporation, a Japanese
 19 corporation; Lenovo Group Limited, a
 Chinese corporation; Toshiba Corporation, a
 20 Japanese corporation; ACER Incorporated, a
 Taiwanese corporation; ASUSTeK
 21 Computer Inc., a Taiwanese corporation;
 BenQ Corporation, a Taiwanese
 22 corporation; Haier Group Corporation, a
 Chinese corporation; and DOES 1-10,
 23 inclusive,

24 Defendants.

CASE NO. CV10-0038 GAF (SHx)

**NOTICE OF *EX PARTE*
 APPLICATION AND *EX PARTE*
 APPLICATION FOR LETTERS
 ROGATORY TO EFFECT SERVICE
 OF PROCESS**

Judge: Hon. Gary A. Fees
 Ctrm: 740

Hearing Date: None scheduled
 Hearing Time: None scheduled

Discovery Cutoff: None set
 Pretrial Conference: None set
 Trial Date: None set

[Filed concurrently with: Memorandum
 of Points and Authorities; Declaration of
 Gregory A. Fayer; Letters Rogatory;
 [Proposed] Order]

25
 26
 27
 28
 NOTICE OF *EX PARTE* APPLICATION FOR LETTERS ROGATORY
 TO EFFECT SERVICE OF PROCESS

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that plaintiff CYBERSitter, LLC d/b/a Solid Oak
3 Software ("Plaintiff") will and hereby does apply *ex parte*, in accordance with Rule 7-
4 19 of the Central District Local Rules, to the Honorable Gary A. Feess, in courtroom
5 740 of the United States District Court for the Central District of California, located at
6 255 East Temple Street, Los Angeles, California 90012, requesting the issuance of
7 Letters Rogatory to effect service of process in this action upon defendants ACER
8 Incorporated, ASUSTeK Computer Inc. and BenQ Corporation (collectively,
9 "Taiwanese Defendants").

10 There is good cause for granting this *ex parte* application. Defendants ACER
11 Incorporated, ASUSTeK Computer Inc. and BenQ Corporation are Taiwanese
12 corporations. Taiwan is not a signatory to the Hague Service Convention.
13 Accordingly, service of process by means of the Hague Convention is not possible for
14 the Taiwanese Defendants.

15 The Taiwanese Defendants have either declined or failed to respond to
16 Plaintiff's requests to arrange for voluntary service. On January 14, 2010, counsel for
17 Plaintiff sent letters to the each of the Taiwanese Defendants (and to two of their U.S.
18 affiliates) requesting arrangement for voluntary service of process. *See* Declaration of
19 Gregory A. Fayer ("Fayer Decl."), ¶ 2, Exhibits A-E. On January 20, 2010, Plaintiff
20 received an email from in-house counsel at BenQ's U.S. affiliate attaching a letter
21 (dated January 18, 2010), stating that it would not accept service on behalf of BenQ
22 Corporation. *Id.* ¶ 8, Exhibit F. As of this date, none of the other Taiwanese
23 Defendants or their affiliates has responded to Plaintiff's request. *Id.* ¶ 9.

24 The process for service by means of Letters Rogatory in Taiwan often takes
25 four to six months or longer to complete. Accordingly, in order avoid undue delay
26 and to facilitate a timely resolution of this dispute, Plaintiff respectfully requests that
27 the Court issue Letters Rogatory requesting the Taiwan Taipei District Court to order
28

1 service of process on the Taiwanese Defendants by a method recognized and
2 prescribed under Taiwanese law.

3 Plaintiff's counsel made a good faith effort to give notice to the Taiwanese
4 Defendants of the substance and timing of this application in accordance with Local
5 Rule 7-19.1. On the afternoon of Wednesday, January 20, 2010, Plaintiff's counsel
6 sent letters by email, facsimile or both (and also by first class mail) to the each of the
7 Taiwanese Defendants and to two of their U.S. affiliates, notifying them of Plaintiff's
8 intent to bring this *ex parte* application on Friday, January 22, 2010, and requesting
9 that they inform Plaintiff's counsel whether or not they intend to oppose the
10 application. Fayer Decl. ¶ 13, Exhibits G-K. Since none of the Taiwanese
11 Defendants has yet been served, none has counsel of record to which to give notice.
12 *Id.* ¶ 13. Accordingly, Plaintiff's counsel contacted them in the most expedient
13 manner reasonably available. *Id.* None of the Taiwanese Defendants responded to the
14 notice letter (except for a reference to the notice letter in the above-referenced email
15 from in-house counsel at BenQ's U.S. affiliate). *Id.* ¶ 13, Exhibit F. It is thus unclear
16 whether the Taiwanese Defendants oppose the application, and, if so, what the basis of
17 their opposition might be. *Id.* ¶ 13.

18 In addition, it is in the interest of justice to allow this *ex parte* application to be
19 heard without notice, pursuant to Local Rule 7-19.2, with respect to the defendants
20 other than the Taiwanese Defendants. The interest of justice is clearly served by
21 expeditiously arranging for service of the Taiwanese Defendants in this action. All of
22 the non-Taiwanese defendants are Japanese or Chinese entities. None has yet been
23 served and none has counsel of record. *Id.* ¶ 19. Furthermore, none will be
24 prejudiced by the issuance of Letters Rogatory to assist in the service of process of the
25 Taiwanese Defendants. Indeed, it is doubtful that any of the non-Taiwanese
26 defendants could show standing to challenge the issuance of Letters Rogatory for
27 service of process on the Taiwanese Defendants. Absent counsel of record to contact
28

1 for notice purposes, it would be both costly and futile to attempt to contact these
2 overseas defendants regarding the instant *ex parte* application. *See id.*

3 This *ex parte* application is based on this Notice; the accompanying
4 Memorandum of Points and Authorities; the accompanying Declaration of Gregory A.
5 Fayer; the accompanying Letters Rogatory for the Court's signature; the pleadings and
6 papers on file in this action; and on such other evidence as may be submitted to the
7 Court and such oral argument and other matters as the Court may consider. A
8 proposed order accompanies this application.

9
10 DATED: January 22, 2010

GIPSON HOFFMAN & PANCIONE
A Professional Corporation
GREGORY A. FAYER
ELLIOT B. GIPSON

11
12
13
14 By /s/ Gregory A. Fayer
15 GREGORY A. FAYER
16 Attorneys for Plaintiff CYBERsitter, LLC
17 d/b/a Solid Oak Software
18
19
20
21
22
23
24
25
26
27
28