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 10 Motorola, Inc.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware.

14 ASAT HOLDINGS, LTD., and ASAT,
 15 INC.,

16 Plaintiffs,

17 vs.

18 MOTOROLA, INC.,

19 Defendant.

No. C03 01514 RS ARB

**DECLARATION OF KERRY HOPKINS IN
 SUPPORT OF MOTOROLA, INC.'S
 MOTION TO COMPEL DEPOSITIONS
 AND PRODUCTION OF DOCUMENTS
 AND THINGS**

Date: September 22, 2004
 Time: 9:30 a.m.
 Place: Courtroom 4, 5th Floor
 Compl. Filed:
 Trial Date:

20 MOTOROLA, INC.,

21 Counterclaimant,

22 vs.

23 ASAT HOLDINGS, LTD., ASAT, INC.,
 24 QPL INTERNATIONAL HOLDINGS,
 LTD., and ASAT LIMITED,

25 Counterdefendants.

Honorable Richard Seeborg

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I, Kerry Hopkins, declare,

1. I am an attorney with the law firm of Reed Smith LLP, attorneys of record in this action for defendant and counterclaimant Motorola, Inc. (“Motorola”). I make this Declaration in support of Motorola’s Motion to Compel Depositions and Production of Documents and Things. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently testify to them.

2. Attached hereto as Exhibit A is a document containing the full text of the discovery in dispute pursuant to Local Rule 37-2.

3. Upon information and belief, on May 27, 2004, Elizabeth Tedesco of Reed Smith LLP sent a letter to John Giffin, counsel for QPL International Holdings, Ltd. (“QPL”), requesting that the parties begin discussions to schedule depositions. Upon information and belief, on June 22, 2004, Morgan Tovey of Reed Smith sent a follow up letter to Mr. Giffin asking that he provide convenient dates on which Motorola could schedule the depositions of Joseph Martin and Tung Lok Li, two executives with QPL, and offering to confer on the matter by telephone. Mr. Giffin did not respond to that letter.

4. On July 2, 2004, I participated in a telephone conference with Mr. Tovey and Mr. Giffin in which we discussed, among other things, scheduling the depositions of Mr. Martin and Mr. Li. Mr. Giffin agreed to look into this matter and scheduled a follow up conference call with me for July 9, 2004. I sent an email on July 2, 2004 confirming this agreement.

5. On July 9, 2004, Mr. Giffin and I conferred by telephone on several matters, including Motorola’s intent to notice the depositions of Mr. Martin and Mr. Li. Mr. Giffin provided me with his own availability in August for such depositions, but was unable to

1 provide me with the availability of Mr. Martin or Mr. Li. In fact, Mr. Giffin stated that he was
2 not sure Mr. Martin, the present CEO of QPL, worked for QPL. Mr. Giffin was also not familiar
3 with Mr. Li, the chairman of QPL and the representative who signed the Immunity Agreement on
4 behalf of QPL.

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6 6. On July 9, 2004, Mr. Giffin and I agreed that Motorola would notice the
7 depositions of Mr. Martin and Mr. Li for dates of its choice. However, we further agreed that
8 Motorola would be willing to reschedule those depositions for dates that were mutually
9 convenient to counsel and the witnesses. Mr. Giffin agreed to get back to me or Mr. Tovey with
10 further scheduling information.

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12 7. On July 20, 2004, I served notices of deposition for Mr. Martin and Mr. Li,
13 to take place on August 31, 2004 and September 1, 2004, respectively in my firm's San
14 Francisco offices. I also sent Mr. Giffin a cover letter confirming that Motorola was still willing
15 to reschedule these dates if needed by QPL. Mr. Giffin did not respond to my letter or the
16 deposition notices. Attached hereto as Exhibit B are true and correct copies of the notices of
17 deposition of Mr. Martin and Mr. Li and the cover letters sent therewith.

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19 8. On August 3, 2004, I left a voicemail message for Jody Willson, an
20 associate working with Mr. Giffin on this matter. I asked Ms. Willson to confirm that QPL would
21 be producing Mr. Martin and Mr. Li in response to Motorola's deposition notices, or,
22 alternatively, I asked that QPL provide us with more convenient dates for those depositions. Ms.
23 Willson responded via email and stated that she would pass my message on to Mr. Giffin.
24 Neither Ms. Willson nor Mr. Giffin ever contacted me again on this issue.

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26 9. On information and belief, on August 9, 2004, Terence Hawley of Reed
27 Smith left a voice mail message for Mr. Giffin, reminding him of the deposition notices and
28 asking him to confirm the dates by the close of business on August 10, 2004. On August 11,

1 2004, Mr. Hawley sent Mr. Giffin a facsimile stating that because QPL had not confirmed the
2 depositions, Motorola intended to seek the Court's intervention. Mr. Hawley left Mr. Giffin a
3 voice mail on August 16, 2004 informing him of the September 22, 2004 hearing date on this
4 Motion. Mr. Giffin did not respond to any of these communications until August 17, 2004.

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6 10. On information and belief, in a telephone conversation between Mr.
7 Hawley and Mr. Giffin on August 17, 2004, Mr. Giffin was still unable to provide dates certain
8 for the depositions of Mr. Martin and Mr. Li. Mr. Giffin again stated that QPL did intend to make
9 these witnesses available to Motorola for deposition, but would not commit to specific dates for
10 those depositions.

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12 11. On January 14, 2004, Motorola served notices of deposition of ASAT
13 Holdings, Ltd. and ASAT Inc. (collectively, "ASAT"). On January 28, 2004, Theresa Norton,
14 counsel for ASAT, sent a letter to Mr. Tovey objecting to those notices on a number of grounds,
15 including on the basis that Motorola had not properly met and conferred on the deposition and
16 that it was premature for Motorola to depose the ASAT corporate witnesses before the Court
17 ruled on ASAT's second motion to dismiss.

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19 12. During January and February 2004, I met and conferred with Ms. Norton
20 on several occasions, by telephone and in writing, to schedule mutually convenient dates for these
21 depositions. However, even after the Court denied ASAT's second motion to dismiss on
22 February 11, 2004, I was unable to confirm deposition dates with ASAT. After suggesting and
23 retracting several other prospective deposition dates, on February 23, 2004, Ms. Norton wrote me
24 a letter stating that ASAT would make its witnesses available for deposition on April 1 or April 2,
25 2004. However, Ms. Norton expressly conditioned that offer on (1) Motorola completing its
26 document production "well before the planned date for deposition" and (2) the parties resolving
27 the remainder of ASAT's many objections.

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1 13. On March 15, 2004, Ms. Norton sent a letter to Ms. Tedesco stating that in
2 light of Motorola’s intent to seek leave from the Court to add ASAT Limited as a party, there was
3 “no basis” for Motorola to take any depositions at that time.

4
5 14. After the Court granted Motorola’s motion to amend and add ASAT
6 Limited as a party, Motorola again attempted to meet and confer with ASAT to schedule the
7 corporate depositions. Motorola conferred with ASAT in writing and by telephone no less than
8 ten times in July and August 2004. However, ASAT refused to schedule deposition dates and
9 stated that it would produce its witnesses for deposition only if and until the Court denied its
10 motion to dismiss.

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12 15. On July 20, 2004, Motorola served new 30(b)(6) deposition notices on
13 ASAT, Inc. and ASAT Holdings, Ltd. Attached hereto as Exhibit C are true and correct copies of
14 the notices of deposition of ASAT Holdings, Ltd. and ASAT, Inc. served on July 20, 2004 and
15 the cover letter that was sent therewith. In response to these notices and the numerous meet and
16 confer letters and phone calls, ASAT conditionally agreed to make its witnesses available on
17 September 8 and September 9, 2004. However, ASAT qualified that offer by stating if the Court
18 had not ruled on its pending motion to dismiss by August 30, 2004, it would not produce these
19 witnesses. Despite numerous attempts by Motorola to confer on this matter, ASAT refused to set
20 an unconditional date for these depositions.

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22 16. On September 24, 2003, Motorola served its first set of requests for
23 production on ASAT. Attached hereto as Exhibit D is a true and correct copy of Motorola’s First
24 Set of Requests for Production of Documents and Things. Included were requests that ASAT
25 produce documents sufficient to identify all sales of the disputed BGA packages, including those
26 products known as Glob Top, FpBGA, FxBGA, PBGA and INT-HS BGA packages. Motorola
27 also requested representative samples of each of these same disputed products.

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1 17. On November 10, 2003, ASAT served written responses and agreed to
2 produce documents sufficient to “show sales” of its BGA and FPBGA products from October 31,
3 1999 through April 8, 2003. ASAT also agreed to produce documents “sufficient to show total
4 sales” of certain other BGA packages for the same time period. Finally, ASAT agreed to produce
5 representative samples of each of the requested products. Attached hereto as Exhibit E is a true
6 and correct copy of ASAT’s Responses to Motorola’s First Set of Requests for Production of
7 Documents and Things.

8
9 18. ASAT delayed any substantive production of documents for months, until
10 February 2004. The documents that they finally produced included thousands of pages of
11 documents related to Motorola’s purchase of BGA packages from ASAT dating back to the early
12 1990s, most of which were cumulative and largely irrelevant.

13
14 19. ASAT’s document production contained only a small number of
15 documents related to BGA sales to non-parties. These included documents, apparently generated
16 from a sales database, that summarize the month, year and product type (among other things) of
17 the BGA sales on which ASAT had paid Motorola royalties. However, ASAT did not produce
18 documents reflecting its sales of the BGA packages whose royalty-bearing status is in dispute in
19 this action.

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21 20. I engaged in a series of written and telephonic meet and confer attempts
22 with Ms. Norton on this matter. On June 29, 2004, Ms. Norton sent a letter to me in which she
23 agreed that ASAT would produce documents sufficient to show sales of the BGA products in
24 dispute, broken down by individual BGA type, “in summary form utilizing the information in
25 plaintiffs electronic data system.” However, throughout our meet and confer sessions, Ms.
26 Norton stated that ASAT was under no obligation to produce information on sales that occurred
27 before October 1999, when ASAT Holdings, Ltd. was formed and ASAT Inc. and ASAT Limited
28 were spun-off from QPL. According to Ms. Norton, ASAT would only consider searching for

1 and producing such documents if Motorola was unsuccessful in obtaining that information from
2 QPL.

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4 21. Although the June 29, 2004 letter stated that the BGA sales summaries
5 would be produced “shortly,” ASAT did not produce the promised summaries. On July 1, 2003, I
6 participated in a conference call with David Kramer (ASAT’s counsel), Ms. Norton, Mr. Tovey
7 and Ms. Tedesco. In that call, Mr. Kramer stated that ASAT would not be producing sales in
8 summary form, but would, instead, produce 35,000 pages of documents evidencing post-October
9 1999 sales.

10
11 22. We continued our attempts to meet and confer with ASAT on this matter
12 during July and August, 2004. ASAT produced no further documents and ignored our inquiries
13 until August 10, 2003. The week of August 10, 2003, ASAT agreed to produce the promised
14 sales summaries for the post-October 1999 period by August 16, 2004. Unfortunately, these
15 summaries were not produced. ASAT also continues to refuse to produce similar summaries for
16 sales that occurred pre-October 1999 and state that they are “not aware” that any such summaries
17 exist. With respect to pre-October 1999 paper invoices, ASAT agreed to produce invoices for the
18 period January 1998 to October 1999, but only if Motorola agreed to forego its right to seek pre-
19 1998 documents. Mr. Hawley advised ASAT that if it would not agree to produce the pre-
20 October 1999 documents and summaries, Motorola would seek the Court’s intervention.

21
22 23. By May 2004, although they had agreed to do so in November 2003,
23 ASAT had not produced a single representative sample of the disputed BGA product. I wrote a
24 letter to Ms. Norton dated May 7, 2004 and brought this deficiency to her attention. In a letter
25 dated May 21, 2004, Ms. Norton stated that she believed ASAT had already sent such the samples
26 to Motorola, but that she would review their records and send the items shortly, if they had not
27 done so already.

1 24. On June 14, 2004, when we still had not received the samples, I sent
2 another letter again requesting the specimens or, at least, a date certain on which we would
3 receive them. On June 29, 2004, Ms. Norton wrote a letter withdrawing ASAT's agreement to
4 "shortly" supply Motorola with samples and stating instead that because her office presently had
5 only one set of the specimens, Motorola could arrange to come to their offices to inspect them.

6
7 25. In further attempts to meet and confer, we explained the need for Motorola
8 to have its own samples to prepare its claims in this action, and the ASAT plaintiffs' counsel
9 agreed to obtain duplicate samples from their clients and produce them to Motorola. However,
10 despite several requests for a date certain for production of all relevant samples, the ASAT
11 plaintiffs refused to provide us with a date.

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13 26. On August 16, 2004, ASAT produced what appeared to be a subset of
14 several samples of various BGA product. ASAT did not identify the categories or model types of
15 the products that it produced. Although Mr. Kramer stated that ASAT intended to produce
16 further samples – specifically, he stated that ASAT would, at some point, produce duplicates of
17 each of the product samples that it had provided to its own counsel – ASAT continued to ignore
18 our requests to provide a date certain on which they would produce the remaining samples.

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20 27. On information and belief, BGA packages are staple articles in the
21 semiconductor industry, and the ASAT plaintiffs manufacture these items in huge quantity. I
22 have reviewed price lists provided by ASAT, which identify ASAT's list retail price for most
23 units as well under \$10 each, and often under \$1.

24
25 28. On information and belief, on Monday August 16, 2004, Mr. Hawley
26 informed Mr. Giffin and Mr. Kramer that Motorola intended to file a motion to compel and
27 planned to notice a hearing date of September 22, 2004. Mr. Giffin raised no objections. Mr.
28 Kramer indicated that he personally had another hearing scheduled for that date. To

1 accommodate Mr. Kramer's personal schedule, we checked the Court's calendar and learned that
2 Judge Seeborg would be unable to hear Motorola's motion on September 29, 2004. Due to the
3 pending discovery cut-off on October 4, 2004, and the already extended delay in ASAT and
4 QPL's compliance with their discovery obligations, Motorola elected to proceed by noticing the
5 hearing on this motion for September 22, 2004.

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I declare under penalty of perjury of the laws of the United States that the following is true and correct.

DATED: August 18, 2004.

By: /s/ Kerry Hopkins
KERRY HOPKINS