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 9 Attorneys for Defendant
 10 International Web Innovations, Inc.

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

14 In re
 15 ACACIA MEDIA TECHNOLOGIES
 16 CORPORATION,

Case No: 05-CV-1114 JW

MDL NO. 1665

**DECLARATION OF VICTOR DE
 GYARFAS IN SUPPORT OF
 INTERNATIONAL WEB
 INNOVATION'S MOTION FOR
 ATTORNEY'S FEES**

[Notice of Motion and Motion, and
 [Proposed] Order filed concurrently
 herewith]

Ctrm: 8, 4th floor
 Judge: Hon. James Ware

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1 I, Victor de Gyarfas, declare:

2 1. I make this declaration on the basis of personal knowledge, and if
3 called to testify as a witness, I would and could testify competently hereto.

4 2. I am a partner at the law firm Foley & Lardner LLP (the “Firm” or
5 “Foley”) in Los Angeles, California, counsel of record for International Web
6 Innovations (“IWI”) in the above-reference action. I make this declaration in
7 support of IWI’s Motion for Attorneys’ Fees.

8 **The Meet And Confer On This Motion (Local Rule 54-5(b)(1))**

9 3. On behalf of IWI, I met and conferred with Alan Block, counsel for
10 Plaintiff Acacia on December 29, 2009 for the purpose of attempting to resolve
11 any dispute with respect to the motion, in accordance with Local Rule 54-5(b)(1).
12 James Slominski, counsel for another defendant, Offendale, was also present on
13 the call. I explained the basis for the motion for attorney’s fees and indicated that
14 the basis was similar to that already explained by another defendant, Echostar. I
15 believe that I complied with the requirements of Local Rule 54-5(b)(1).

16 **Services Rendered And Qualifications (Local Rule 54-5(b)(2), (3))**

17 4. I was and am one of the lawyers primarily responsible for IWI’s
18 defense in this action. I am an attorney based in Los Angeles, California and have
19 been practicing patent litigation in California for more than fifteen years. I have
20 litigated numerous patent cases in the Northern District of California and other
21 district courts throughout the country.

22 5. Foley performed legal services in the above captioned matter and
23 these services were billed to IWI and paid by IWI. The legal services provided to
24 IWI were billed on an hourly basis using the firm’s customary hourly rates for the
25 services provided. Records of the time billed to IWI were kept in the firm’s
26 customary manner, through its electronic timekeeping and accounting systems.

27 6. To prepare this declaration, I directed Foley’s accounting department
28 to create printouts of all of the bills sent to IWI in connection with the defense of

1 this case and a summary of all of the hours worked by each attorney, the hourly
2 rates of and fees charged by each attorney, and descriptions of the tasks performed
3 by each attorney. Foley attorneys, including the attorneys involved in the defense
4 of this matter, regularly enter the time spent on each matter along with a
5 description of the tasks performed. Attorney time is typically entered on a daily
6 basis, consistent with the practice of many other law firms.

7 7. I reviewed the above described printouts created by Foley's
8 accounting department and I believe, based on my experience, that the rates
9 charged to IWI by Foley are reasonable. I am aware that many large law firms
10 practicing in California charge rates equal to or greater than the rates charged to
11 IWI in this case when the experience level of the lawyers on this matter is
12 considered.

13 8. Additionally, based on my experience, the number of hours expended
14 on all of the tasks in this case was reasonable.

15 9. Foley has performed legal services in the above-captioned matter and
16 those services were billed to IWI and paid by IWI. Services were provided by
17 several Foley lawyers including Victor de Gyarfias, William J. Robinson, Ted R.
18 Rittmaster, Anna M. Vradenburgh, and Stephen M Lobbin, among others. While
19 other Foley lawyers also spent time on this case, by its motion, IWI is seeking only
20 the fees of the lawyers specifically named above, all of whom spent 50 or more
21 hours on this matter.

22 10. Foley & Lardner LLP was rated a "#1 Go-To-Firm" for Intellectual
23 Property in connection with "Who Represents America's Biggest Companies" in
24 Corporate Counsel magazine 2009. Foley & Lardner LLP was rated as having one
25 of the top 10 largest intellectual property practices in the United States by Law360
26 Litigation Almanac 2009. Foley & Lardner LLP was rated a top patent litigation
27 firm by IP Law & Business for the years 2005 – 2008. Foley & Lardner LLP is a
28 firm of approximately 1,000 attorneys, with more than 200 of those attorneys

1 practicing intellectual property law.

2 11. The hourly rates of the attorneys identified above are set forth in the
3 table below. The fees listed below were actually charged to and paid by the client.
4 Foley typically adjusts its rates in February of each year.

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	Rate in dollars / hour						
Attorney	2003	2004	2005	2006	2007	2008	2009
7 W. Robinson	565	565	595	635	675	745	790
8 T. Rittmaster	395	450	485			590	
9 V. de Gyarfas	375	440	485	490	540	600	640
10 A. Vradenburgh	350						
11 S. Lobbin	340	405					

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14 12. The most intense efforts on the case occurred in 2003 and 2004. The
15 tasks performed related to the defense of the case included at least the following:

- 16
- 17 • Reviewing and responding to the complaint
 - 18 • Attending court ordered conferences
 - 19 • Drafting initial disclosures
 - 20 • Reviewing, analyzing, and responding to discovery requests
 - 21 • Analyzing defenses
 - 22 • Analyzing claim construction issues
 - 23 • Participating in claim construction briefings and hearings
 - 24 • Reviewing and responding to summary judgment filings
- 25
- 26
- 27

28 13. In the event that the Court is inclined to grant IWI an award of

1 attorney's fees, but seeks further details concerning the activities of the attorneys
2 involved in the defense of the case, IWI would produce an abstract of or the
3 contemporary time records of the attorneys for inspection, perhaps for in camera
4 inspection, as the Court deems appropriate, in accordance with Local Rule 54-
5 5(b)(2).

6 14. Provided in the table below is a summary of the hours spent by each
7 attorney and the fees charged for each attorney.

8 Attorney	Hours spent	Fees charged and paid (\$)
9 W. Robinson	74.3	45,756.50
10 T. Rittmaster	233.0	96,159.00
11 V. de Gyarfas	507.2	225,804.00
12 A. Vradenburgh	106.5	37,275.00
13 S. Lobbin	52.6	18,248.00

14 The total amount of fees charged to IWI for the work of the attorneys listed above
15 is \$423,242.50. The above described work was performed for the purpose of
16 pursuing this matter for IWI. The services performed and the attorney's fees and
17 expenses detailed in this declaration were all reasonably necessary to represent the
18 interests of IWI in this lawsuit.

19 15. Attached hereto as Exhibit "1" is a true and correct copy of a printout
20 of the professional biography of William J. Robinson from the Foley website
21 showing his qualifications. Mr. Robinson participated in the following tasks in
22 connection with this case: Reviewing and responding to the complaint; Reviewing,
23 analyzing, and responding to discovery requests; Analyzing defenses; Analyzing
24 claim construction issues; Participating in claim construction briefings; Reviewing
25 and responding to summary judgment filings.

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27 16. Attached hereto as Exhibit "2" is a true and correct copy of a printout
28 of the professional biography of Ted. R. Rittmaster from the Foley website

1 showing his qualifications. Mr. Rittmaster participated in the following tasks in
2 connection with this case: Reviewing and responding to the complaint; Reviewing,
3 analyzing, and responding to discovery requests; Analyzing defenses; Analyzing
4 claim construction issues; Participating in claim construction briefings.

5 17. Attached hereto as Exhibit “3” is a true and correct copy of a printout
6 of the professional biography of Victor de Gyarfias from the Foley website showing
7 my qualifications. I participated in the following tasks in connection with this
8 case: Reviewing and responding to the complaint; Reviewing, analyzing, and
9 responding to discovery requests; Analyzing defenses; Analyzing claim
10 construction issues; Participating in claim construction briefings and hearings;
11 Reviewing and responding to summary judgment filings.

12 18. Anna Vradenburgh was a senior counsel with Foley who worked on
13 this matter in 2003 and 2004. Ms. Vradenburgh is no longer with Foley. Ms.
14 Vradenburgh is a 1992 graduate of Loyola Law School (Los Angeles) who has
15 been practicing as an attorney in the intellectual property field since becoming a
16 lawyer. Ms. Vradenburgh participated in the following tasks in connection with
17 this case: Analyzing defenses; Analyzing claim construction issues; Participating
18 in claim construction briefings.

19 19. Stephen M. Lobbin was an associate at Foley who worked on this
20 matter in 2003 and 2004. Mr. Lobbin is no longer with Foley. I am informed that
21 Mr. Lobbin is currently an attorney with a law firm called the Eclipse Group.
22 Attached hereto as Exhibit “4” is a true and correct copy of a printout of the
23 professional biography of Mr. Lobbin from the Eclipse Group’s website. Mr.
24 Lobbin participated in the following tasks in connection with this case: Analyzing
25 defenses; Analyzing claim construction issues.

26 20. As evidence of the reasonableness of Foley’s rates, I obtained from
27 third parties reports of rates charged by other law firms.

28 21. Attached hereto as Exhibit “5” is a true and correct copy of excerpts

1 from the American Intellectual Property Law Association Report on the Economic
2 Survey 2005.

3 22. Attached hereto as Exhibit “6” is a true and correct copy of excerpts
4 from the American Intellectual Property Law Association Report on the Economic
5 Survey 2007.

6 23. Attached hereto as Exhibit “7” is a true and correct copy of excerpts
7 from the American Intellectual Property Law Association Report on the Economic
8 Survey 2009.

9 24. Attached hereto as Exhibit “8” is a true and correct copy of excerpts
10 of the National Law Journal’s 2008 Billing Survey. The 2008 Billing Survey was
11 obtained as an Excel file. Exhibit 8 only includes the columns listing the firms,
12 hourly rates and source listed in the 2008 Billing Survey, but omits columns listing
13 information regarding annual billable hours requirements, variations on the billable
14 hour, percentage of firm’s revenue obtained through variations on the billable hour,
15 billing alternatives, and the percentage of firm’s revenue obtained through
16 alternative billing methods. In addition, the 2008 Billing Survey was reformatted
17 for easier printing and viewing.

18 25. Attached hereto as Exhibit “9” is a true and correct copy of an article
19 by Leigh Jones entitled “*Law firm fees defy gravity*” from the National Law
20 Journal pages S1-S8 on December 8, 2008.

21 26. Attached hereto as Exhibit “10” is a true and correct copy of relevant
22 portions of the Declaration of Rohit K. Singla in Support of Plaintiff Applied
23 Materials, Inc.’s Motion for Attorney Fees in *Applied Materials, Inc. v.*
24 *Multimetrixs, LLC*, No. C-06-7372 MHP (N.D. Cal. Dec. 3, 2008). The exhibit
25 was obtained from the United States District Court, Northern District of California,
26 PACER website.

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I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true. Executed January 4, 2010, in Los Angeles, California.

/s/ Victor de Gyrfas
Victor de Gyrfas