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 14 PATRIOT SCIENTIFIC CORP.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

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 20 ACER, INC., ACER AMERICA CORP.,
 21 and GATEWAY INC.,
 22 Plaintiff,
 23 v.
 24 TECHNOLOGY PROPERTIES
 25 LIMITED, PATRIOT SCIENTIFIC
 CORPORATION, and ALLIACENSE
 26 LIMITED,
 27 Defendants.

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Attorneys for Plaintiffs
 ACER INC., ACER AMERICA CORP., and
 GATEWAY INC.

Case No. 5:08-cv-00877 JF

**STIPULATED REQUEST TO DISMISS
 THE SECOND CLAIM OF PLAINTIFFS'
 FIRST AMENDED COMPLAINT
 REGARDING U.S. PATENT NO. 5,784,584
 AND ~~[PROPOSED]~~ ORDER THEREON**

The Honorable Jeremy Fogel

Farella Braun & Martel LLP
 235 Montgomery Street, 17th Floor
 San Francisco, CA 94104
 (415) 954-4400

1 **WHEREAS** plaintiffs Acer, Inc., Acer America Corp., and Gateway, Inc. (collectively
2 “Acer”) filed a First Amended Complaint seeking a declaratory judgment that Acer did not
3 infringe any valid and enforceable claim of U.S. Patent No. 5,784,584 (“’584 patent”);

4 **WHEREAS** defendants Technology Properties Limited, Patriot Scientific Corporation,
5 and Alliacense Limited (collectively “TPL”) filed an Answer denying Acer’s averment that Acer
6 did not infringe any valid and enforceable claim of the ’584 patent but did not assert a
7 counterclaim based on that patent;

8 **WHEREAS**, in the related actions, *Barco N.V. v. Technology Properties Limited, et al.*,
9 Case No. 08-05398 JF and *HTC v. Technology Properties Limited, et al.*, Case No. 08-0882 JF,
10 the Court has dismissed the ’584 patent based on a covenant not to sue with the same scope and
11 language;

12 **WHEREAS** TPL has offered and hereby provides to Acer a covenant-not-to-sue with
13 respect to the ’584 patent, which is reproduced in its entirety below; and

14 **WHEREAS** in light of TPL’s covenant-not-to-sue, Acer has agreed to dismiss its
15 declaratory judgment claim as to the ’584 patent on the terms set forth below;

16 **NOW, THEREFORE**, TPL and Acer, by and through their undersigned counsel, hereby
17 stipulate, and respectfully request that the Court order, as follows:

18 1. TPL has provided the following covenant-not-to-sue to Acer, which the Court
19 hereby approves: Technology Properties Limited and Patriot Scientific Corporation, each on
20 behalf of itself and any successors-in-interest to U.S. Patent No. 5,784,584 (“the ’584 patent”),
21 hereby unconditionally and irrevocably covenant not to assert at any time any claim of patent
22 infringement including direct infringement, contributory infringement and/or inducing
23 infringement against Acer, Inc., Acer America Corp., and Gateway Inc. (collectively “Acer”)
24 under any claim of the ’584 patent as they currently read, and any claim in any reissued or
25 reexamined version of the ’584 patent that is the same as, or substantially identical to, any claim
26 of the ’584 patent as it currently reads, against any products made, used, offered for sale, sold, or
27 imported into the United States by Acer currently or at any time prior to the date of this covenant.

28 2. In light of TPL’s covenant-not-to-sue with respect to the ’584 patent, the Second

1 Claim of Declaratory Judgment Regarding the '584 Patent in Acer's First Amended Complaint is
2 hereby **DISMISSED** without prejudice, for lack of subject matter jurisdiction, pursuant to Fed. R.
3 Civ. P. 41(a)(2).

4 3. The dismissal provided by this Order does not limit the parties' ability to continue
5 to prosecute its remaining claims, defenses, and counterclaims in this litigation regarding U.S.
6 Patent Nos. 5,809,336; 6,598,148; 5,440,749; and 5,530,890. This dismissal also does not limit
7 any rights by the parties to subsequently seek recovery of attorneys' fees and costs.

8 **IT IS HEREBY STIPULATED.**

9 Dated: June 25, 2010

FARELLA BRAUN & MARTEL LLP

10 I represent that concurrence in the filing of this
11 document has been obtained from each of the
12 other signatories which shall serve in lieu of
13 their signatures on this document.

By: /s/ John L. Cooper
John L. Cooper

Attorneys for Defendants
TECHNOLOGY PROPERTIES LIMITED
and ALLIACENSE LIMITED

14 Dated: June 25, 2010

KIRBY NOONAN LANCE & HOGE

By: /s/ Charles T. Hoge
Charles T. Hoge

Attorneys for Defendant
PATRIOT SCIENTIFIC CORPORATION

19 Dated: June 25, 2010

K&L GATES LLP

By: /s/ Jeffrey Ratinoff
Jeffrey Ratinoff

Attorneys for Plaintiffs
ACER, INC., ACER AMERICA CORP. and
GATEWAY INC.

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

2 1. TPL has provided the following covenant-not-to-sue to Acer, which the Court
3 hereby approves: Technology Properties Limited and Patriot Scientific Corporation, each on
4 behalf of itself and any successors-in-interest to U.S. Patent No. 5,784,584 (“the ’584 patent”),
5 hereby unconditionally and irrevocably covenant not to assert at any time any claim of patent
6 infringement including direct infringement, contributory infringement and/or inducing
7 infringement against Acer, Inc., Acer America Corp., and Gateway Inc. (collectively “Acer”)
8 under any claim of the ’584 patent as they currently read, and any claim in any reissued or
9 reexamined version of the ’584 patent that is the same as, or substantially identical to, any claim
10 of the ’584 patent as it currently reads, against any products made, used, offered for sale, sold, or
11 imported into the United States by Acer currently or at any time prior to the date of this covenant.

12 2. In light of TPL’s covenant-not-to-sue with respect to the ’584 patent, the Second
13 Claim of Declaratory Judgment Regarding the ’584 Patent in Acer’s First Amended Complaint is
14 hereby **DISMISSED** without prejudice, for lack of subject matter jurisdiction, pursuant to Fed. R.
15 Civ. P. 41(a)(2).

16 3. The dismissal provided by this Order does not limit the parties’ ability to continue
17 to prosecute its remaining claims, defenses, and counterclaims in this litigation regarding U.S.
18 Patent Nos. 5,809,336; 6,598,148; 5,440,749; and 5,530,890. This dismissal also does not limit
19 any rights by the parties to subsequently seek recovery of attorneys’ fees and costs.

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DATED: 6/28/10


Honorable Jeremy Fogel
United States District Court Judge