

EXHIBIT D

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January 19, 2006

VIA ELECTRONIC MAIL

Alan P. Block, Esq.
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601 S. Figueroa Street
Suite 3300
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Re: *In re Acacia Media Technologies Corp.*,
Case No. C 05-1114 (MDL 1665)

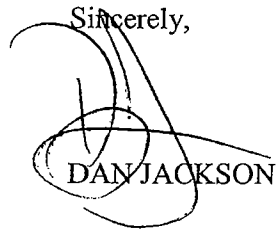
Dear Alan:

The cable and satellite defendants, and the New Destiny group of defendants represented by Fish & Richardson, have reviewed your proposed stipulation, and have made some changes to it in the attached redline. First, we do not agree to a Rule 54(b) certification, and do not think that the Federal Circuit will agree to hear this case piecemeal in any event, so we have deleted the language related to the Rule 54(b) issue. Second, some of the language in your draft could be read to imply that defendants make, use or sell transmission systems (within the meaning of the patent) that are located at more than one location, which we do not concede, so we have removed that language. Third, we have left in your reservation of rights on appeal, but have removed the clause that follows it because it is either redundant or implies that you have rights other than those normally provided for by law. There are also a few minor corrections of a typographical or factual nature (e.g., more claims contain the term "sequence encoder" than you originally listed).

We have also reviewed your response to my letter of January 5, 2006 in which you state that you will not include claims 10-13 of the '863 patent in your forthcoming infringement contentions. That is fine, but does not preclude you from attempting to reassert those claims—or the claims in the other patents at issue that contain the term "identification encoding means"—in your final infringement contentions, or from asserting those claims against us in another jurisdiction. Accordingly, we ask that you covenant not to sue defendants on any of the following claims: 1-18 of the '992 patent, claims 1-2 and 10-13 of the '863 patent, claims 1, 4, and 7 of the '275 patent, and claims 1-3 of the '720 patent.

Alan P. Block, Esq.
January 19, 2006
Page 2

I look forward to your response.

Sincerely,

DAN JACKSON

DEJ

cc: All Counsel of Record

1 COUNSEL LISTED ON SIGNATURE PAGES
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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION
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11 In re:) Case No. C 05-01114
12) MDL No. 1665
13)
14) **[PROPOSED] STIPULATED SUMMARY**
15) **JUDGMENT OF NONINFRINGEMENT**
16) **AND INVALIDITY FOR**
17) **INDEFINITENESS OF US PATENT NO.**
18) **6,144,702**
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1 On December 7, 2005, the Honorable James Ware issued the “Further Claim Construction
2 Order; Order Finding Claims Terms Indefinite And Claims Invalid” (“Order”). In the Order, the
3 Court found, among other things, the following:

- 4 1. that the claim term “sequence encoder,” which appears in independent claims 1 and
5 17 and in dependent claims 7, 18, 32, and 33 of U.S. Patent No. 6,144,702 (“the ‘702
6 patent”), is indefinite;
- 7 2. that the claim term “identification encoder,” which appears in independent claims 1,
8 17, and 27 and in dependent claims 5, 6, 19, and 31 of the ‘702 patent, is indefinite;
9 and
- 10 3. that the claim phrase “transmission system at a first location,” which appears in
11 independent claims 1, 17, and 27 of the ‘702 patent, means “a transmission system at
12 one particular location separate from the location of the reception system.”

13 The parties agree that the effect of the Court’s finding that the term “sequence encoder” in
14 claims 1, 7, 17, 18, 32, and 33 is indefinite and finding that the term “identification encoder” in
15 claims 1, 17, and 27 is indefinite, if upheld on appeal, would be to render all of the claims of the
16 ‘702 patent (claims 1-42) indefinite, and therefore invalid, under 35 U.S.C. § 112, ¶ 2.

17 The parties also agree that the effect of the Court’s construction of the phrase “transmission
18 system at a first location” in claims 1, 17, and 27 of the ‘702 patent as meaning “a transmission
19 system at one particular location separate from the location of the reception system,” if upheld on
20 appeal, would be to render all of the claims of the ‘702 patent (claims 1-42) not infringed by
21 defendants.

22 Accordingly, the parties to the cases listed below agree and request entry of summary
23 judgment of: (1) invalidity for indefiniteness of claims 1-42 of the ‘702 patent on the basis that the
24 Court has found that the terms “sequence encoder” and “identification encoder” of claims 1-42 of
25 the ‘702 patent are indefinite; and (2) non-infringement of claims 1-42 of the ‘702 patent on the
26 basis that the Court has construed the phrase “transmission system at a first location” to mean “a
27 transmission system at one particular location separate from the location of the reception system.”
28 This Summary Judgment is without prejudice as to all rights of Acacia on appeal.

1 THEREFORE, IT IS ADJUDICATED, as a matter of law, that Plaintiff Acacia shall take
 2 nothing as to all defendants listed below on its claim for infringement of its '702 patent, and that, as
 3 to all defendants listed below, the Court shall enter Summary Judgment of: (1) invalidity of claims
 4 1-42 for indefiniteness on the basis that the Court has found that the terms "sequence encoder" and
 5 "identification encoder" of claims 1-42 of the '702 patent are indefinite; and (2) non-infringement of
 6 claims 1-42 on the basis that the Court has construed the phrase "transmission system at a first
 7 location" to mean "a transmission system at one particular location separate from the location of the
 8 reception system," which would thereby cause claims 1-42 of the '702 to not be infringed by
 9 defendants. The entry of this Summary Judgment is without prejudice to Acacia's rights as outlined
 10 above.

<u>Separate N.D. Cal. Case Number</u>	<u>Defendant(s)</u>
05-CV-01561 JW	Game Link, Inc.
05-CV-01562 JW	Club Jenna, Inc. and CJ, Inc.
05-CV-01563 JW	1. Cybernet Ventures, Inc. 2. ACMP, LLC 3. Global Media Resources SA
05-CV-01564 JW	Global AVS, Inc., dba DrewNet
05-CV-01565 JW	1. ICS, Inc. 2. AP Net Marketing, Inc.
05-CV-01566 JW	National A-1 Advertising, Inc.
05-CV-01568 JW	New Destiny Internet Group
05-CV-01569 JW	Audio Communications
05-CV-01570 JW	VS Media, Inc.
05-CV-01571 JW	Ademia Multimedia, LLC

<u>Separate N.D. Cal. Case Number</u>	<u>Defendant(s)</u>
05-CV-01572 JW	1. International Web Innovations, Inc. 2. Offendale Commercial Ltd. BV
05-CV-01573 JW	Adult Entertainment Broadcast Network
05-CV-01574 JW	Cybertrend, Inc.
05-CV-01575 JW	Lightspeedcash
05-CV-01576 JW	1. Adult Revenue Service 2. Innovative Ideas International 3. Global Intermedia, Inc. 4. Askcs.com, Inc.
04-CV-02308 JW	1. Comcast Cable Communications, LLC 2. Charter Communications, Inc. 3. The DIRECTV Group, Inc. 4. Echostar Technologies Corp. 5. Echostar Satellite LLC 6. Hospitality Network, Inc. 7. Coxcom, Inc.
04-CV-03789 JW	Mediacom Communications Corporation
05-CV-01399 JW	1. Mid-Continent Media, Inc. 2. US Cable Holdings LP 3. Savage Communications Inc. 4. Loretel Cablevision 5. Arvig Communication System 6. Cannon Valley Communications, Inc. 7. Sjoberg's Cablevision, Inc.
05-CV-01543 JW	1. Armstrong Group 2. Block Communications, Inc, dba Buckeye

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<u>Separate N.D. Cal. Case Number</u>	<u>Defendant(s)</u>
	Cable 3. Wide Open West LLC 4. Massillon Cable TV, Inc.
05-CV-01598 JW	1. Cable America Corporation 2. Cable One, Inc. 3. NPG Cable, Inc.
05-CV-01703 JW	Cebridge Communications

SO ORDERED.

Date: _____

United States District Judge

Stipulated to and agreed upon:

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11 MEDIA CORPORATION, INNOVATIVE IDEAS
12 INTERNATIONAL, LTD., GAME LINK, INC.,
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