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 ZORAN CORPORATION and OAK TECHNOLOGY, INC.

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

14 ZORAN CORPORATION and OAK  
 15 TECHNOLOGY, INC.,

16 Plaintiffs,

17 v.

18 MEDIATEK, INC., AUDIOVOX  
 CORPORATION, CHANGZHOU  
 19 SHINCO DIGITAL TECHNOLOGY CO.,  
 LTD., INITIAL TECHNOLOGY, INC.,  
 20 MINTEK DIGITAL, INC., SHINCO  
 INTERNATIONAL AV CO., TERAPIN  
 21 TECHNOLOGY PTE., LTD.  
 CORPORATION and TERAOPTIX L.P.  
 22 d/b/a/ TERAPIN TECHNOLOGY,

23 Defendants.

24 AND RELATED COUNTERCLAIMS.  
 25

CASE NO. C04-02619 RMW (PVT)  
 CASE NO. C04-04609 RMW (PVT)

**DECLARATION OF AARON WAINSCOT  
 IN SUPPORT OF PLAINTIFFS ZORAN  
 CORPORATION AND OAK TECHNOLOGY,  
 INC.'S MOTION TO COMPEL RESPONSES  
 TO REQUESTS FOR PRODUCTION FROM  
 DEFENDANTS**

**Date: November 22, 2005**  
**Time: 10:00 a.m.**  
**Courtroom: 5**  
**Honorable Patricia V. Trumbull**

1 ZORAN CORPORATION and OAK  
2 TECHNOLOGY, INC.,

3 Plaintiffs,

4 v.

5 MEDIATEK, INC., ARTRONIX  
6 TECHNOLOGY, INC., ASUS  
7 COMPUTER INTERNATIONAL,  
8 ASUSTEK COMPUTER, INC., EPO  
9 SCIENCE AND TECHNOLOGY, INC.,  
10 LITE-ON INFORMATION  
11 TECHNOLOGY CORPORATION,  
12 MICRO-STAR INTERNATIONAL CO.,  
13 LTD., MSI COMPUTER CORP., TEAC  
14 CORPORATION, TEAC AMERICA,  
15 INC., and ULTIMA ELECTRONICS  
16 CORPORATION,

17 Defendants.

18 AND RELATED COUNTERCLAIMS.

19 I, Aaron Wainscoat, declare:

20 1. I am an attorney with the law firm of DLA Piper Rudnick Gray Cary US LLP,  
21 counsel for Zoran Corporation and Oak Technology, Inc., (“Plaintiffs”) in this matter. I have  
22 personal knowledge of the facts stated herein, and, if called as a witness, could and would  
23 competently testify thereto.

24 2. In the parallel United States International Trade Commission Investigation No.  
25 506 (the “506 Investigation”), in which Plaintiffs also accused the Defendants of infringing the  
26 Patents-in-Suit, MediaTek was ordered to produce technical documents regarding the structure,  
27 function and operation of the MT1888 chip, which MediaTek claimed was designed around the  
28 Patents-in-Suit. However, MediaTek produced only limited technical documents in response to  
this order, declaring that the MT1888 chip was not sufficiently developed for additional technical  
documents to be of use in an infringement analysis. **Exhibit A** attached hereto is a true and  
correct copy of the 2004 cross-use agreement permitting the parties to use discovery from the 506  
Investigation in this case.

1           3.       On November 24, 2004 Plaintiffs served document requests relating to  
2 communications relating to MediaTek's design around efforts in the First Set of Requests For  
3 Production of Documents to MediaTek. On or about December 30, 2004, MediaTek asserted  
4 attorney-client privilege and/or attorney work product doctrine protection with respect to  
5 Plaintiffs' Request For Production No. 26 to MediaTek regarding its efforts to design around the  
6 Patents-in-Suit. However, MediaTek did not provide any support or further details, either in the  
7 form of a privilege log or in meet and confer writings or teleconferences, for these objections.

8           4.       **Exhibit B** attached hereto is a true and correct copy of a letter my office sent to  
9 counsel for Defendants on or about January 7, 2005 requesting that MediaTek produce documents  
10 responsive to Request For Production No. 26 to MediaTek relating to its product development  
11 efforts to design around the Patents-in-Suit as well as a privilege log.

12           5.       **Exhibit C** attached hereto is a true and correct copy of a letter from counsel for  
13 Defendants to my office on or about February 4, 2005 in which Defendants agreed to produce  
14 non-privileged documents relating to MediaTek's efforts to design-around the Patents-in-Suit.

15           6.       On April 22, 2005, Plaintiffs served additional document requests to MediaTek  
16 and the Customer Defendants with respect to communications relating to MediaTek's design-  
17 around efforts. On or about May 23, 2005, in their responses to Plaintiffs' April 22, 2005  
18 Requests For Production, each of the subject Defendants claimed the same privilege objections to  
19 four analogous document requests regarding relating to communications about MediaTek's  
20 efforts to design around the Patents-in-Suit. **Exhibit D** attached hereto are true and correct copies  
21 of the Customer Defendants' responses to Plaintiffs' document requests, including the requests at  
22 issue. Defendants did not provide any support or further details, in the form of a privilege log or  
23 otherwise, for these objections.

24           7.       On or about May 17, 2005, MediaTek asserted in a press release that it had  
25 "already developed a design around" the Patents-in-Suit and that it had "already provided its  
26 customers with the new generation chipsets." **Exhibit E** attached hereto is a true and correct  
27 copy of MediaTek's May 17, 2005 press release found on MediaTek's web site page,  
28 <http://www.mtk.com.tw/pr.htm>.

1           8.       During a teleconference between counsel for the parties in or about the first week  
2 of June 2005, counsel for Defendants claimed to counsel for Plaintiffs that they assumed that  
3 counsel for Plaintiffs had previously agreed that it was unnecessary for Defendants to produce a  
4 privilege log for all documents created after the Complaint was filed in this case. During this  
5 teleconference, I explained to counsel for Defendants that this assumption was erroneous and  
6 illogical, as demonstrated by Plaintiffs' January 7, 2005 written request for a privilege log for  
7 documents that MediaTek previously asserted were created after March 2004, which would have  
8 exempted from a privilege log all document responsive to the design-around requests at issue,  
9 which by MediaTek's own admission were created after the case was initiated.

10           9.       **Exhibit F** is a true and correct copy of a letter from my office to counsel for  
11 Defendants on or about June 21, 2005 alerting counsel for Defendants of their misunderstanding  
12 and faulty assumption regarding any such privilege log exemption agreement and re-emphasizing  
13 Defendants' obligation to produce a privilege log, stating that "[w]ith respect to all outstanding  
14 document requests, including all requests specifically relating to MediaTek's MT1888 chip and  
15 design around efforts, Plaintiffs requested that a privilege log be served in accordance with the  
16 Federal Rules of Civil Procedure" and that the privilege log "identify all responsive documents  
17 created or dated through the present, and specifically not limited to a time period prior to any  
18 filing date in this action." In this letter, my office informed Defendants of their obligation to  
19 produce a privilege log or suffer a waiver of any claimed privilege under *Burlington Northern &*  
20 *Santa Fe Railway Co. v. District Ct.*, 408 F.3d 1142 (9th Cir. 2005).

21           10.       **Exhibit G** attached hereto is a true and correct copy of a letter sent by my office  
22 on or about August 30, 2005 to counsel for Defendants again requesting production of documents  
23 responsive to the requests at issue. In this letter, my office also requested confirmation that the  
24 MT1888 is the only product MediaTek alleges was designed around the Patents-in-Suit and  
25 accordingly is the only product responsive to Plaintiffs' discovery requests relating to design-  
26 around products in this case.

27           11.       **Exhibit H** attached hereto is a true and correct copy of a letter sent by counsel for  
28 Defendants to my office on or about September 2, 2005 responding to my offices' August 30,

1 2005 letter by stating that MediaTek stands on its objection in its document request responses that  
2 all communications regarding MediaTek's efforts to develop products that design around the  
3 Patents-in-Suit, which encompass all the responsive documents at issue, are privileged. The letter  
4 also states that counsel for MediaTek is "in the process of verifying whether other MediaTek  
5 design-around products have recently been released." While acknowledging that the parties had  
6 no agreement regarding a temporal exclusion of documents from a privilege log, counsel for  
7 Defendants also continued to claim that their position was that there was an agreement, and that  
8 they would continue to operate under this assumption. However, at no time in this case did  
9 Plaintiffs concede that any documents responsive to the requests at issue are privileged, let alone  
10 agree to any reduction of Defendants' discovery obligations.

11 12. **Exhibit I** attached hereto is a true and correct copy of a letter from my office to  
12 counsel for Defendants sent on or about September 2, 2005 restating the fact that there was never  
13 an agreement in this case to limit the documents required on the privilege log and again  
14 emphasizing that Defendants were failing to comply with their discovery obligations regarding  
15 the documents.

16 13. On or about September 9, 2005, during a teleconference with counsel for  
17 Defendants, my office first discovered the fact that, in addition to the previously-disclosed  
18 MT1888 product, MediaTek is alleging that six additional MediaTek products (the MT1155,  
19 MT1355, MT1585, MT1685, MT1828 and MT1359) were designed around the Patents-in-Suit  
20 and are responsive to Plaintiffs' discovery requests relating to design-around products in this  
21 case.

22 14. On or about September 29, 2005, MediaTek issued a press release stating that "the  
23 impact of today's ruling will be minimal, if any, as [MediaTek] has already developed a design-  
24 around solution that is specifically crafted to avoid infringement of the '527 patent," that  
25 MediaTek's "new generation design-around chipsets will not be affected by" the Commission's  
26 ruling and that "MediaTek has already provided its customers with the new generation chipsets  
27 and all customers have already migrated to the new solution in their products since the middle of  
28 the year." **Exhibit J** attached hereto is a true and correct copy of MediaTek's September 29, 2005

1 press release found on MediaTek's web site pages, <http://www.mtk.com.tw> and  
2 <http://www.mtk.com.tw/pr.htm>.

3 15. Without ever asserting that no non-privileged documents responsive to the  
4 requests exist, Defendants have not produced documents responsive to the requests at issue, such  
5 as internal communications, emails, notes or engineering notebooks discussing the actual changes  
6 or redesigns implemented in MediaTek's MT1888, MT1155, MT1355, MT1585, MT1685,  
7 MT1828 and MT1359 chips. Plaintiffs still lack documents from any Defendant reflecting the  
8 development of the design-around products.

9 16. Defendants have continually refused to produce a privilege log to support or  
10 substantiate any claim of privilege or attorney work product protection. Plaintiffs have no  
11 information with which to evaluate Defendants' claims of privilege and/or work product  
12 protection in its 2004 objections the document requests at issue.

13 I declare under penalty of perjury under the laws of the United States of America, that the  
14 foregoing is true and correct.

15 Executed on this 18<sup>th</sup> day of October, 2005 at East Palo Alto, California.

16   
17 AARON WAINSCOAT