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 17 Facsimile: (305) 482-8600

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 Telephone: (414) 271-2400  
 Facsimile: (414) 297-4900

15 Attorneys for Plaintiffs  
 16 AVAGO TECHNOLOGIES U.S. INC.,  
 17 AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.,  
 18 AVAGO TECHNOLOGIES TRADING LTD., AND  
 19 AVAGO TECHNOLOGIES INTERNATIONAL SALES PTE. LTD.

20 **UNITED STATES DISTRICT COURT**  
 21 **NORTHERN DISTRICT OF CALIFORNIA**  
 22 **SAN JOSE DIVISION**

21 AVAGO TECHNOLOGIES U.S. INC.,  
 22 AVAGO TECHNOLOGIES GENERAL IP  
 23 (SINGAPORE) PTE. LTD., AVAGO  
 24 TECHNOLOGIES TRADING LTD., AND  
 25 AVAGO TECHNOLOGIES  
 26 INTERNATIONAL SALES PTE. LTD.,  
 27  
 28 Plaintiffs,  
 v.  
 IPTRONICS INC., MELLANOX  
 TECHNOLOGIES DENMARK APS (f/k/a  
 IPTRONICS A/S),  
 Defendants.

Case No.: 5:10-CV-02863-EJD (PSG)  
**REQUEST FOR INTERNATIONAL  
 JUDICIAL ASSISTANCE PURSUANT TO  
 THE HAGUE CONVENTION OF 18 MARCH  
 1970 ON THE TAKING OF EVIDENCE IN  
 CIVIL OR COMMERCIAL MATTERS**  
 Honorable Paul S. Grewal

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**1. Sender**

The Honorable Paul S. Grewal  
United States Magistrate Judge  
United States District Court for the Northern District of California  
San Jose Division  
280 South 1<sup>st</sup> Street  
San Jose, CA 95113  
United States of America

**2. Central Authority of the Requested State**

Der Präsident  
des Amtsgerichts Freiburg  
Holzmarkt 2  
79098 Freiburg  
Germany  
Telephone: +49 (761) 205-0  
Fax: 49 (761) 205-1800  
E-mail: [poststelle@agfreiburg.justiz.bwl.de](mailto:poststelle@agfreiburg.justiz.bwl.de)  
Website: [www.amtsgericht-freiburg.de](http://www.amtsgericht-freiburg.de)

**3. Person to Whom the Executed Request Is to Be Returned**

Dr. Georg Andreas Rauh  
Rechtsanwalt  
Attorney-at-Law  
Patentanwälte Rechtsanwälte  
Siebertstrasse 3  
81675 München  
Germany  
Telephone: +49 (0) 89 413 04-0  
E-mail: [g.rauh@vossiusandpartner.com](mailto:g.rauh@vossiusandpartner.com)

**4. Specification of the Date by Which the Requesting Authority Requires Receipt of the Response to the Letter Request**

By December 31, 2014, or as soon as reasonably practicable. The U.S. District Court for the Northern District of California has scheduled a procedural hearing on February 5, 2015, for which the parties need to file a statement by January 26, 2015. The evidence cutoff date is March 2, 2015.

1 **IN CONFORMITY WITH ARTICLE 3 OF THE CONVENTION, THE UNDERSIGNED**  
2 **APPLICANT HAS THE HONOR TO SUBMIT THE FOLLOWING REQUEST:**

3 **5. a. Requesting Judicial Authority (Art. 3(a))**

4 United States District Court for the Northern District of California  
5 San Jose Division  
6 280 South 1<sup>st</sup> Street  
7 San Jose, CA 95113  
8 United States of America

9 **b. To the Competent Authority of (Art. 3(a))**

10 The Central Authority of Germany

11 **c. Name of the Case and Any Identifying Number**

12 *Avago Technologies Fiber IP (Singapore) Pte. Ltd. v. IPtronics, Inc. and IPtronics*  
13 *A/S; Case Number 5:10-CV-02863 EJD (PSG), United States District Court for the*  
14 *Northern District of California.*

15 **6. Name and Addresses of the Parties and Their Representatives (Art. 3(b))**

16 **a. Plaintiffs**

17 Avago Technologies Fiber IP (Singapore) Pte. Ltd.  
18 No. 1 Yishun Avenue 7  
19 Singapore 768923  
20 Singapore  
21 Telephone: 65-6755-7888

22 Avago Technologies U.S. Inc.  
23 350 West Trimble Road, Building 90  
24 San Jose CA 95131  
25 USA  
26 Telephone: (408) 435-7400

27 Avago Technologies General IP (Singapore) PTE. LTD.  
28 1 Yishun Avenue 7  
Singapore, 768923  
Singapore  
Telephone: 65-6755-7888

Avago Technologies Trading LTD.  
4th Floor, IBL House  
Caudan  
Port Louis  
Mauritius

1 Avago Technologies International Sales PTE. LTD.  
2 1 Yishun Avenue 7  
3 Singapore, 768923  
4 Singapore  
5 Telephone: 65-6755-7888

6 *Counsel for the Plaintiffs*

7 John C. Vetter  
8 Foley & Lardner LLP  
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15 3579 Valley Centre Drive, Suite 300  
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18 Facsimile: (858) 792-6773  
19 E-mail: AChang@Foley.com

20 Dr. Georg Andreas Rauh  
21 Rechtsanwalt  
22 Attorney-at-Law  
23 Vossius & Partner  
24 Patentanwälte Rechtsanwälte  
25 Siebertstrasse 3  
26 81675 München  
27 Germany  
28 Telephone: +49 (0) 89 413 04-0  
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Dr. Thure Schubert  
Rechtsanwalt  
Attorney-at-Law  
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Patentanwälte Rechtsanwälte  
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81675 München  
Germany  
Telephone: +49 (0) 89 413 04-0  
E-mail: schubert@vossiusandpartner.com

**b. Defendants**

IPtronics, Inc.

1 1370 Willow Road  
2 2<sup>nd</sup> Floor  
3 Menlo Park, California 94025  
4 Telephone: 650-681-9653

5 Mellanox Technologies Denmark ApS  
6 Ledreborg Allé 130B  
7 DK-4000 Roskilde  
8 Denmark  
9 Telephone: +45 4632 8434

10 ***Counsel for the Defendants***

11 Steven D. Hemminger  
12 Xavier Brandwajn  
13 Alston & Bird LLP  
14 1950 University Avenue, 5th Floor  
15 East Palo Alto, CA 94303  
16 Email: steve.hemminger@alston.com  
17 Email: xavier.brandwajn@alston.com

18 Brian Parker Miller  
19 Alston & Bird LLP  
20 1201 W Peachtree St.  
21 Atlanta, GA 30309  
22 Email: parker.miller@alston.com

23 Thomas W. Davison  
24 Alston & Bird LLP  
25 950 F Street, NW  
26 Washington, DC 20004-1404  
27 Email: tom.davison@alston.com

28 **7. a. Nature of the Proceedings (Art. 3(c))**

This is a civil action with claims arising in part under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and, in particular, 35 U.S.C. § 271; under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051-1141 (the “Lanham Act”), and in particular 15 U.S.C. § 1125 (§ 43(a) of the Lanham Act); and under the State of California’s Uniform Trade Secrets Act §§3426 *et seq.*

**b. Summary of the Complaint (Art. 3(c))**

On June 29, 2010, Avago Technologies Fiber IP (Singapore) Pte. Ltd. (“Avago Fiber IP”) filed a Complaint against IPtronics, Inc. and IPtronics A/S (collectively, “IPtronics”).

1 On September 18, 2012, Avago Fiber IP filed its Second Amended and Supplemental  
2 (“SASC”) complaint to join Avago Technologies U.S. Inc. (“Avago US”), Avago Technologies  
3 General IP (“Avago General IP”), Avago Technologies International Sales Pte. Ltd. (“Avago  
4 Sales”), and Avago Technologies Trading Ltd. (“Avago Trading”) (collectively, “Avago  
5 Licensees”), which have exclusive rights in the patents-in-suit to this action. The SASC included  
6 the original allegations that IPtronics (i) contributorily infringed and actively induced infringement  
7 of one or more claims of United States Patent No. 5,359,447, which Avago Fiber IP owns, and (ii)  
8 directly infringed, contributorily infringed, and actively induced infringement of one or more claims  
9 of United States Patent No. 6,947,456, which Avago Fiber IP owns. The SASC also added factual  
10 allegations and related claims against IPtronics for violations of 15 U.S.C. § 1125 (§ 43(a) of the  
11 Lanham Act), misappropriation of trade secrets under the State of California’s Uniform Trade  
12 Secrets Act §§ 3426 *et seq.*, and unlawful, unfair, or fraudulent business act or practices under  
13 California Business & Professional Code § 17200.

14 Effective October 29, 2012, Avago Fiber IP transferred ownership of the patents-in-suit to  
15 Avago General IP, and Avago Fiber IP ceased to exist.

16 On July 1, 2013, Mellanox Technologies Ltd. acquired defendant IPtronics A/S, now known  
17 as Mellanox Technologies Denmark ApS, which becomes a wholly owned subsidiary of Mellanox  
18 Technologies Ltd.

19 **c. Summary of Defense (Art. 3(c))**

20 IPtronics has denied Avago’s allegations and asserted counterclaims against Avago,  
21 including declaratory judgments of non-infringement and invalidity of Avago’s patents, breach of  
22 contract, fraudulent misrepresentation, and other business tort claims.

23 **8. a. Evidence to Be Obtained (Art. 3(d))**

24 The evidence to be obtained is for use at trial in the action of *Avago Technologies Fiber IP*  
25 *(Singapore) Pte. Ltd. v. IPtronics, Inc. and IPtronics A/S*; Case Number 5:10-CV-02863 EJD (PSG),  
26 United States District Court for the Northern District of California, and includes (i) oral testimony  
27 from Dr. Martin Grabherr, Senior Manager Sales & Marketing at Philips Technologie GmbH, U-L-  
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1 M Photonics (“ULM”), or his successor in the company, (ii) oral testimony from Mr. Roger King,  
2 Senior Manager of Research and Development at ULM, or his successor in the company and (iii)  
3 documents from ULM. Schedule A, attached as Exhibit 1 hereto, sets forth a list of questions to be  
4 asked of the witnesses and the documents sought. As Schedule A reflects, the evidence sought is  
5 limited, relating to the “aperture” on vertical cavity surface emitting lasers (“VCSELs”) ULM  
6 manufactures and supplies to the United States, and ULM’s electronic modeling of such products.

7 A previous Letter of Request to the Central Authority of Germany (“Central Authority”) for  
8 International Judicial Assistance Pursuant to the Hague Convention of 18 March 1970 on the Taking  
9 of Evidence Abroad in Civil or Commercial Matters (“Letter Request”) was issued by the  
10 Requesting Authority on September 18, 2012, and the original executed copy sent soon thereafter.  
11 On December 6, 2012, the Central Authority requested clarification with respect to certain sections  
12 in the Letter Request. On January 2, 2013, Avago filed an Application for the Issuance of  
13 Supplemental Request for International Judicial Assistance Pursuant to the Hague Convention of 18  
14 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Supplemental  
15 Letter Request”) to provide the requested clarification. On February 8, 2013, the Requesting  
16 Authority issued a Supplemental Letter Request. On February 15, 2013, before the original  
17 executed Supplemental Letter Request could be sent to the Central Authority, this case was stayed.  
18 The case was reopened on July 23, 2014.

19 The September 18, 2012 Letter Request is being withdrawn and the Amended Letter Request  
20 for International Judicial Assistance Pursuant to the Hague Convention of 18 March 1970 on the  
21 Taking of Evidence Abroad in Civil or Commercial Matters (“Amended Letter Request”) sent to the  
22 Central Authority.

23 **b. Purpose of the Evidence to Be Obtained (Art. 3(d))**

24 Avago seeks evidence from Dr. Martin Grabherr (or his successor in the company) and  
25 Mr. Roger King (or his successor in the company), and ULM in connection with its allegations that  
26 IPtronics has contributorily infringed and actively induced infringement of one or more claims of  
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1 United States Patent Nos. 5,359,447 (the “‘447 Patent”) and 6,947,456 (the “‘456 Patent”), and  
2 directly infringed one or more claims of the ‘456 Patent.

3 **Evidence to show infringement of the ‘447 patent**

4 In general terms, the ‘447 Patent covers the invention of an optical communication system  
5 having a VCSEL. A multi-mode optical medium such as an optical fiber is coupled to the VCSEL.  
6 A power supply provides a bias current that drives the VCSEL into multiple transverse mode  
7 operation, preferably in more than two distinct modes. The VCSEL generates a beam of light that  
8 has a lower coherence than that provided by a single-mode laser. This beam of light is modulated  
9 with data carried by an incoming signal. The VCSEL preferably has an “aperture” larger than about  
10 eight (8) micrometers (microns) through which the modulated light beam is emitted. A true and  
11 correct copy of the ‘447 Patent, which includes a more detailed description of the invention covered,  
12 is attached hereto as Exhibit 2.

13 In its Complaint, Avago alleges that IPtronics has marketed and sold in the United States  
14 various driver circuits for VCSELs and components for use in optical communication networks.  
15 IPtronics issues publications providing instructions for how to couple these products with VCSELs  
16 and an optical coupling medium to provide an optical communication network. Avago has alleged  
17 that such optical communication networks infringe the ‘447 Patent. Specifically, if the optical  
18 communication network resulting from the coupling process uses a VCSEL with an aperture that  
19 has a diameter of at least 8 microns, then this optical communication network literally infringes the  
20 ‘447 Patent. If the optical communication network resulting from the coupling process uses a  
21 VCSEL with an aperture that has a diameter of 8 microns or less, then this optical communication  
22 network infringes the ‘447 Patent by the doctrine of equivalents.

23 Upon information and belief, the optical communication networks comprised of products  
24 from IPtronics utilize VCSELs manufactured by ULM Photonics, as taught by IPtronics. A publicly  
25 available document released by IPtronics, entitled “Reference Design,” instructs customers how to  
26 use ULM’s VCSELs with IPtronics’ products. A copy of the “Reference Design” document is  
27 attached hereto as Exhibit 3. In order to determine whether the optical communication networks  
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1 implicated by the lawsuit literally infringe the '447 Patent, or infringe by the doctrine of equivalents,  
2 it is necessary to determine the diameter of the aperture on ULM's VCSELs.

3 "Aperture" is a term used by persons of skill in the art to refer to the unoxidized portion of a  
4 layer in a VCSEL that confines current flow, and thus the path of the light emitted by the active  
5 region of a VCSEL. A VCSEL consists of many layers of semiconductor material grown or formed  
6 parallel to a substrate. The composition and thicknesses of the various VCSEL layers are specified  
7 by an epitaxial recipe. An active region, where light is generated, is located among layers near the  
8 VCSEL center. The active region lies between upper and lower mirror stacks. Metal contacts are  
9 provided on the top and bottom of the VCSEL so that electrical current can pass through it, and  
10 stimulate the electrons of atoms located in the active region so that light can be generated. There are  
11 several techniques used to confine this current flow to the desired area of the active region. ULM's  
12 VCSELs are "oxide confined," as are many commercial embodiments. The upper and lower mirrors  
13 of the VCSELs are made of AlGaAs layers having an optical thickness of 1/4 wavelength of the  
14 emitted light. In an oxide confined VCSEL, one of the AlGaAs layers has a higher aluminum  
15 content than all of the other layers. When the VCSEL is subjected to heat and steam, the aluminum  
16 oxidizes from the outside in. Oxidation is continued until the unoxidized portion in the high  
17 aluminum content layer is of the desired dimension. The dimension of this unoxidized portion is  
18 what is known as the "aperture" of the VCSEL.

19 Aperture dimensions can have a range of acceptable values or tolerances. The range of  
20 tolerances is caused by acceptable variations in material composition, temperature, properties of the  
21 steam, and dimensional tolerances of the VCSEL structure itself. Oxidation of the high AlGaAs  
22 layer is a physical process of limited precision. Based on these tolerances and other considerations,  
23 manufacturers develop an acceptable range of values for their apertures in which the VCSELs will  
24 perform satisfactorily. That range may well be over 10% to 15% of the aperture dimension. For  
25 example, if a target aperture is 7.8 microns, an acceptable tolerance may be close to 9 microns.

26 The evidence sought by Avago through this Letter Request includes the target values and  
27 acceptable range of values for the apertures in certain ULM VCSEL products. This information will  
28

1 aid in determining whether and in what manner the optical communication networks using products  
2 from IPtronics infringe Avago's '447 Patent.

3  
4 **Evidence to show infringement of the '456 patent**

5 In general terms, the '456 Patent pertains to laser driver circuits and optical transmitters  
6 containing them, that are used to control arrays of VCSELs for high-speed optical data transmission.  
7 More specifically, they may be used to "drive" VCSELs in a VCSEL array with respective drive  
8 waveforms (also called drive currents or drive current waveforms) that represent the incoming data  
9 stream. The inventions of the asserted claims of the '456 patent include "negative peaking" of the  
10 electrical signal, which refers to a transient present in the drive waveform during, and sometimes  
11 after, the transition from a "high" or "logic 1" level of the electrical drive waveform down to the  
12 "low" or "logic 0" of the waveform. An electronic model of the electrical properties of a VCSEL is  
13 useful for modeling the behavior of the electrical circuit in which the VCSEL operates. The  
14 evidence sought from ULM relating to its electronic models for its VCSELs, related bond wires, and  
15 other parasitic circuit elements, will be useful for modeling the electrical behavior of those of the  
16 accused products that contain an ULM VCSEL as a part of the proof that such products infringe the  
17 '456 Patent. A true and correct copy of the '456 Patent, which includes a more detailed description  
18 of the invention covered, is attached hereto as Exhibit 2.

19 **9. Identity of Persons to be Examined (Art. 3(e))**

20 Based upon information available from ULM Photonics' web site, Avago believes one or  
21 both of the following ULM employees, and ULM as a corporate entity, may have the requisite  
22 knowledge:

23 Dr. Martin Grabherr (or his successor within the company)  
24 Senior Manager, Sales & Marketing  
25 Philips Technologie GmbH  
26 U-L-M Photonics  
27 Lise-Meitner str. 13  
28 d-89081 Ulm  
Germany  
Telephone: +49 (0) 731 550194-011

Mr. Roger King (or his successor within the company)

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Senior Manager of Research and Development  
Philips Technologie GmbH  
U-L-M Photonics  
Lise-Meitner str. 13  
d-89081 Ulm  
Germany  
Telephone: +49 (0) 731 550194-011

**Alternatively**

An officer, director or managing agent, or any other person who consents to testify on ULM's behalf concerning the matters and questions set forth in Schedule A, to be designated by:

Philips Technologie GmbH  
U-L-M Photonics  
Lise-Meitner str. 13  
d-89081 Ulm  
Germany  
Telephone: +49 (0) 731 550194-011

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**10. Questions to be Put to the Persons to be Examined or Statement of the Subject-Matter About Which They are to be Examined (Art. 3(f))**

A list of questions to be asked of the witnesses is set forth on Schedule A, annexed hereto.

**11. Documents or Other Property to be Inspected (Art. 3(g))**

The documents to be inspected are set forth on Schedule A, attached. Should ULM fail to produce these documents, it is requested that the Court conducting the taking of evidence requests the production of documents according to § 142 ZPO and, if necessary, applies compulsory measures according to § 390 ZPO.

**12. Requirement That the Evidence be Given on Oath or Affirmation (Art. 3(h))**

The witnesses should be examined under oath or affirmation.

**13. Special Methods or Procedures to be Followed (Art. 3(i) and 9)**

This Letter Request includes the following requests:

- **That this Letter Request be granted and the evidence-taking proceeding be performed on an expedited basis because the fact discovery cut off in the underlying case is on March 2, 2015;**
- That attorneys for the Plaintiff, and, if the Defendants so choose, attorneys for the Defendants be permitted to ask the witnesses additional questions that are related to those questions set forth in Schedule A;
- That an authorized shorthand writer/court reporter be present at the examination who shall record the oral testimony verbatim (in English) and prepare a transcript of the evidence;
- That an authorized shorthand writer/court reporter be present at the examination who shall record the oral testimony verbatim (in German) and prepare a transcript of the evidence;
- That an authorized interpreter be present at the examination who shall translate the questions and oral testimony between German and English;
- That the examinations take place at dates and times as may be agreed upon between the witnesses and counsel for the parties;
- That, to the extent that multiple hearing dates are necessary to complete all the questions in Schedule A and the additional questions related to those questions set forth in Schedule A, the hearings are scheduled on consecutive days or as close to each other as reasonably practicable;

- 1 • That, to the extent the individual witnesses identified in Section 9 of this Letter Request do  
2 not have sufficient knowledge to testify as to the matters and questions set forth in Schedule  
3 A, ULM, as a corporate entity, be required in accordance with established means of practice  
4 under Federal Rule of Civil Procedure 30(b)(6) to provide testimony by designating one or  
5 more officers, directors, or managing agents, or other persons who consent to testify on  
6 ULM's behalf concerning the matters and questions set forth in Schedule A; and  
7
- 8 • That all evidence be obtained in a manner compliant with the Stipulated Protective Order,  
9 attached as Exhibit 4 and entered by the Honorable Paul S. Grewal on May 2, 2011 in the  
10 action of *Avago Technologies Fiber IP (Singapore) Pte. Ltd. v. IPtronics, Inc. and IPtronics*  
11 *A/S*; Case Number 5:10-CV-02863 EJD (PSG), United States District Court for the Northern  
12 District of California.

13 In the event the evidence cannot be taken in the manner or location requested, it is to be taken in  
14 such a manner or location as provided by local law. To the extent any request in this section is  
15 deemed incompatible with German principles of procedural law, it is to be disregarded.

16 **14. Request for Notification of the Time and Place for the Execution of the Request**  
17 **and Identity and Address of Any Person to be Notified (Art. 7)**

18 Please notify the following counsel regarding the time and place for the execution of the  
19 Letter Request:

20 John C Vetter  
21 Foley & Lardner LLP  
22 One South Biscayne Boulevard, Suite 1900  
23 Miami, FL 33151  
24 Telephone: (305) 382-8424  
25 Fax: (305) 482-8600  
26 E-mail: jvetter@foley.com

27 Ary Chang  
28 3579 Valley Centre Drive, Suite 300  
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Thomas W. Davison  
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950 F Street, NW  
Washington, DC 20004-1404  
Email: tom.davison@alston.com

**15. Request for Attendance of Participation of Judicial Personnel of the Requesting Authority at the Execution of the Letter Request (Art. 8)**

No attendance of judicial personnel is requested.

**16. Specification of Privilege or Duty to Refuse to Give Evidence Under the Law of the State of Origin (Art. 11(b))**

The privilege or duty of the witnesses to refuse to give evidence shall be the same as if they were testifying under the applicable provisions of the Federal Rules of Civil Procedure, including if giving such evidence would (1) subject them to a real and appreciable danger of criminal liability in the United States, or (2) disclose a confidential and privileged communication between them and their respective attorneys.

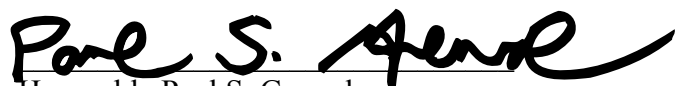
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**17. Fees and Costs (Art. 14 and 26)**

Fees and costs incurred which are reimbursable under the Hague Convention shall be borne by Foley & Lardner LLP, One South Biscayne Boulevard, Suite 1900, Miami, Florida 33151.

Date of Request: December 19, 2014

Signature and Seal of Requesting Authority

  
Honorable Paul S. Grewal