

FILED

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

InterDigital Communications, LLC
781 Third Avenue
King of Prussia, PA 19406-1409

InterDigital Technology Corporation
Hagley Building, Suite 105
3411 Silverside Road, Concord Plaza
Wilmington, DE 19810-4812

IPR Licensing, Inc.
Hagley Building, Suite 105
3411 Silverside Road, Concord Plaza
Wilmington, DE 19810-4812

Petitioners,

v.

Huawei Technologies Co., Ltd.
Bantian, Longgang District
Shenzhen, Guangdong Province 518129
People's Republic of China

FutureWei Technologies, Inc.
d/b/a Huawei Technologies (USA)
5700 Tennyson Parkway, Suite #500
Plano, TX 75024

↓
Nokia Corporation
Keilalahdentie 2-4
FIN-00045 Nokia Group
Espoo
Finland

Nokia Inc.
102 Corporate Park Drive
White Plains, NY 10604

ZTE Corporation
ZTE Plaza, No. 55 Hi-Tech Road South
Shenzhen, Guangdong Province 518057
People's Republic of China

Case: 1:12-mc-00018
Assigned To : Lamberth, Royce C.
Assign. Date : 1/12/2012
Description. Miscellaneous

**MOTION FOR ISSUANCE OF
LETTER OF REQUEST**

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Courts for the District of Columbia

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ZTE (USA) Inc.
2425 N. Central Expy., Ste. 600
Richardson, TX 75080

LG Electronics, Inc.
LG Twin Towers, 20 Yeouido-dong
Yeongdeungpo-gu
Seoul 150-721
Republic of Korea

LG Electronics U.S.A., Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632

LG Electronics Mobilecomm U.S.A., Inc.
10101 Old Grove Road
San Diego, CA 92131

Respondents.

**MOTION OF PETITIONERS INTERDIGITAL COMMUNICATIONS, LLC,
INTERDIGITAL TECHNOLOGY CORPORATION, AND IPR LICENSING, INC.
FOR THE ISSUANCE OF A LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL ASSISTANCE**

Petitioners InterDigital Communications, LLC, InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively “InterDigital”), Complainants in *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Investigation No. 337-TA-800 before the U.S. International Trade Commission (“ITC”), hereby move for the Court to issue, under its seal and signature, the attached Letter of Request on behalf of InterDigital to obtain documents and deposition testimony from the following foreign third party:

Alcatel-Lucent
3 av. Octave Gréard
75007 Paris,
France

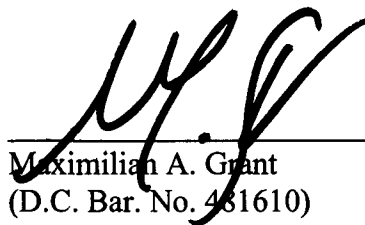
Administrative Law Judge David P. Shaw has recommended that the United States Court for the District of Columbia issue the Letter of Request. InterDigital seeks foreign

discovery from Alcatel-Lucent because Alcatel-Lucent manufactures at least the base station infrastructure equipment used in 3G cellular networks that interact with wireless devices, including 3G-enabled cellular telephones and peripheral devices, which is relevant to InterDigital's infringement analysis.

For the reasons set forth more fully in the accompanying memorandum, InterDigital respectfully requests that the Court assign a Judge to this matter and expedite the issuance of the attached Letter of Request.

InterDigital moved in the ITC for the administrative law judge to recommend that this Court issue a letter of request on behalf of InterDigital to obtain discovery from Alcatel-Lucent in France on September 27, 2011, and the Administrative Law Judge granted InterDigital's motion on January 4, 2012. No party filed any response to the motion, other than Nokia Corp. and Nokia Inc. (collectively "Nokia"), which opposed the motion. Nokia based its opposition on its motion to stay the Investigation, which was denied by Order No. 6.

Respectfully Submitted,



Maximilian A. Grant
(D.C. Bar. No. 481610)

Bert C. Reiser

(D.C. Bar No. 451942)

LATHAM & WATKINS LLP

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Counsel for Petitioners

InterDigital Communications, LLC,

InterDigital Technology Corporation, and

IPR Licensing, Inc.

Dated: January 12, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

InterDigital Communications, LLC,
InterDigital Technology Corporation, and
IPR Licensing, Inc.,

Petitioners,

v.

Huawei Technologies Co., Ltd., FutureWei
Technologies, Inc. d/b/a Huawei
Technologies (USA), Nokia Corporation,
Nokia Inc., ZTE Corporation, ZTE (USA)
Inc., LG Electronics, Inc., LG Electronics
U.S.A., Inc., and LG Electronics
Mobilecomm U.S.A., Inc.,

Respondents.

Misc. No. 12-18

**MOTION FOR ISSUANCE OF
LETTER OF REQUEST**

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS INTERDIGITAL
COMMUNICATIONS, LLC, INTERDIGITAL TECHNOLOGY CORPORATION, AND
IPR LICENSING, INC. FOR THE ISSUANCE OF A LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL ASSISTANCE**

Petitioners InterDigital Communications, LLC, InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively "InterDigital"), Complainants in *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Investigation No. 337-TA-800 before the U.S. International Trade Commission ("ITC"), hereby submit this memorandum in support of its motion for this Court to issue, under its seal and signature, the attached Letter of Request to the appropriate judicial authority of France.

On September 27, 2011, InterDigital moved in the ITC for the administrative law judge to recommend that this Court issue a letter of request on behalf of InterDigital to obtain discovery from Alcatel-Lucent in France. No party filed any response to the motion, other than Nokia Corp. and Nokia Inc. (collectively "Nokia"), which opposed the motion. Nokia based its

opposition on its motion to stay the Investigation, which was denied by Order No. 6. On January 4, 2012, Administrative Law Judge David P. Shaw, based on his knowledge of the case, signed an order recommending that the U.S. District Court for the District of Columbia issue the Letter of Request on behalf of InterDigital. (Exhibit 1).

The Letter of Request, along with the required translation, solicits assistance from the French Central Authority to obtain from Alcatel-Lucent certain technical documents and testimony relevant to this case. InterDigital respectfully requests that the Court issue the attached Letter of Request.

The following documents are attached to this Memorandum:

- Exhibit 1: Order No. 10: Granting InterDigital's Motion Seeking Recommendation to the District Court for the District of Columbia to Issue a Letter of Request (January 4, 2012), signed by Administrative Law Judge David P. Shaw and Secretary to the Commission James R. Holbein.
- Proposed Order:
 - Attachment 1: Letter of Request by the District Court for the District of Columbia on behalf of InterDigital.
 - Attachment A: Documents or Other Property to be Produced by Alcatel-Lucent.
 - Attachment B: Topics for the Deposition of Alcatel-Lucent.
 - Attachment C: Protective Order.
 - Attachment 2: Letter of Request by the District Court for the District of Columbia on behalf of InterDigital. [Certified translation into French]
 - Attachment A: Documents or Other Property to be Produced by Alcatel-Lucent. [Certified translation into French]
 - Attachment B: Topics for the Deposition of Alcatel-Lucent. [Certified translation into French]
 - Attachment C: Protective Order. [Certified translation into French]

In support of this Motion, InterDigital respectfully states as follows:

I. THE DISTRICT COURT HAS AUTHORITY TO ISSUE LETTERS OF REQUEST UNDER THE HAGUE CONVENTION

The Hague Convention provides that “[i]n civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provision of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.” Hague Convention, Art. 1. Both the United States and the French Republic are parties to the Hague Convention. The French Republic ratified the Hague Convention on August 7, 1974. *See* Hague Conf. on Private Int’l Law, *Status Table*, http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=82 (last updated May 12, 2011).

The Hague Convention authorizes the District Court for the District of Columbia to issue the Letter of Request. *See Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 535 (1987) (stating that “a judicial authority in one contracting state ‘may’ forward a letter of request to the competent authority in another contracting state for the purpose of obtaining evidence”); *see, e.g.*, 28 U.S.C. § 1781(b)(2) (permitting “the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner” and reproducing the Hague Convention). The purpose of the Hague Convention is to establish a system, based on international comity, that enables a requesting state to obtain evidence abroad in a manner “tolerable” to the state executing the request. *See Societe Nationale*, 482 U.S. at 530.

Although the Administrative Law Judge can directly issue letters of request, the French Judicial Authorities are more likely to respond to a Letter of Request from a District Court because the latter will be recognized as originating from a civil case rather than an

administrative case. See U.S. Dep't of State, *Preparation of Letters Rogatory*, http://travel.state.gov/law/judicial/judicial_683.html (last visited Jan. 6, 2012). Accordingly, InterDigital issue the attached Letter of Request to the French Judicial Authorities on behalf of InterDigital. See *Perrier Bottled Water Litig.*, 138 F.R.D. 348, 355-56 (D. Conn. 1991) (granting discovery in France under the Hague Convention procedures); cf. *Miller v. Holzmann*, No. 95-1231, 2006 WL 3093122 (D.D.C. Oct. 31, 2006) (granting motion to issue Letters of Request to Germany under Hague Convention).

II. BACKGROUND

A. Relevant Alcatel-Lucent Witnesses and Documents Reside in France

InterDigital requested that the Commission investigate its allegations that the Respondents import, sell for importation, and/or sell after importation certain 3G wireless devices and components thereof that infringe U.S. Patent No. 7,349,540 (“the ’540 patent”), U.S. Patent No. 7,502,406 (“the ’406 patent”), U.S. Patent No. 7,536,013 (“the ’013 patent”), U.S. Patent No. 7,616,970 (“the ’970 patent”), U.S. Patent No. 7,706,332 (“the ’332 patent”), U.S. Patent No. 7,706,830 (“the ’830 patent”), and U.S. Patent No. 7,970,127 (“the ’127 patent”) (collectively, the “Asserted Patents”).

In InterDigital’s Complaint dated July 26, 2011, InterDigital told the Commission that it sought information and evidence related to certain 3G wireless devices and components thereof. To ascertain the information, InterDigital expounded its First Set of Requests for Production of Documents and its First Set of Interrogatories to the Respondents on September 1, 2011. In those discovery requests, InterDigital sought tailored information regarding processes and methods used by Respondents’ devices that may infringe upon the Asserted Patents and the technologies that Respondents’ devices rely upon to communicate with 3G wireless base stations. Specifically, InterDigital sought information from the Respondents related to their devices’

interaction with base station transmissions and channels. The Respondents provided written responses to InterDigital's discovery requests on September 26, 2011.

Alcatel-Lucent is a manufacturer of at least the base station infrastructure equipment used in 3G cellular networks. On information and belief, Alcatel-Lucent base stations interact with each Respondent's 3G wireless devices, including Respondents' devices that use the technology claimed in InterDigital's Asserted Patents and that are accused of infringement in this investigation. Alcatel-Lucent is believed to be most knowledgeable about the operation of its base stations. The operation of the base stations is relevant to the issue of whether Respondents' wireless devices infringe certain of the Asserted Patents.

Based on the role of base stations in the Asserted Patents, InterDigital reasonably believes that the requested technical documentation about Alcatel-Lucent's base stations, including source code, will be relevant to InterDigital's assertions that the Respondents infringe the Asserted Patents. The attached Letter requests that Alcatel-Lucent produce documents described in Attachment A to the Letter, and requests that Alcatel-Lucent appear and testify at a deposition regarding the matters identified in Attachment B to the Letter of Request as soon as practicable.

III. ARGUMENT

The issuance of the Letter of Request is warranted for several reasons. First, the deposition testimony and documents requested in the Letter of Request are highly relevant to InterDigital's allegations in this investigation. InterDigital's complaint alleges that the Respondents violated Section 337 by importing devices that infringe InterDigital's patents. InterDigital seeks information tailored to determine the operation and functionality of any Alcatel-Lucent base station devices used in conjunction with Respondents' current or future 3G handsets in 3G cellular networks. InterDigital also seeks deposition testimony from Alcatel-

Lucent about these matters. InterDigital anticipates that the requested testimony and documents will be highly material to the issue of infringement in this investigation. InterDigital does not seek information the disclosure of which would compromise the security of the French Republic.

Second, the Letter of Request does not violate the governing law. InterDigital recognizes that in accordance with Article 23 of the Hague Convention, France will execute letters of request issued for the purpose of obtaining pre-trial discovery of documents where the letter of request calls for “documents [that] are enumerated limitatively in the Letter of Request and have a direct and precise link with the object of the procedure.” *See* French Republic, Declarations to Hague Convention, http://www.hcch.net/index_en.php?act=status.comment&csid=501&disp=resdn (last visited Jan. 6, 2012). Consistent with this reservation, the attached Letter of Request is narrowly tailored and seeks only the oral testimony of a knowledgeable Alcatel-Lucent witness and certain technical documentation, including source code, for its 3G wireless base stations. The Letter of Request only requests documents that have a direct and precise link with the purpose of the proceeding and does not request documents beyond that scope. Moreover, InterDigital will comply with any procedures required under French law for the taking of depositions.

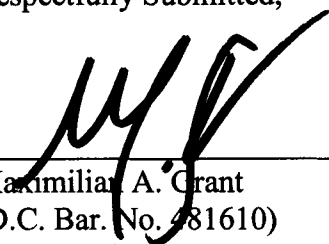
Third, InterDigital is unable to obtain the testimony of the witness or the documents by any other means, inasmuch as the relevant witness and documents are in France and, upon information and belief, are not domiciled in the United States, and thus are beyond the reach of the Commission’s regular subpoena power. Without the requested Alcatel-Lucent documents and witness, InterDigital’s ability to prove infringement in this investigation will be prejudiced.

InterDigital is fully prepared to meet the procedural requirements for obtaining evidence through a Letter of Request. The steps in the process of obtaining judicial assistance are:

- InterDigital must obtain a Letter of Request with a District Court judge's signature and the District Court's seal, and a translated copy thereof.
- The Letter of Request must include the identities of the parties, the nature of the proceedings, the discovery sought, special procedures, the identity of the party that will bear any costs, and other information as recommended by the Hague Convention. See Hague Convention, *Model for Letters of Request recommended for use in applying the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*, <http://www.hcch.net/upload/actform20e.pdf> (last visited Jan. 6, 2012).
- InterDigital must transmit the letter to the Central Authority for France for enforcement in a French court. The French court will serve the requests on Alcatel-Lucent.

In view of France's ratification, reservations, and declarations to the Hague Convention, InterDigital respectfully requests that the Court issue the attached Letter of Request directed to the Central Authority for France.

Respectfully Submitted,



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Bert C. Reiser
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InterDigital Technology Corporation, and
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Dated: January 12, 2012