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Attorneys for Non-Party Pixelworks, Inc.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NEW MEDIUM TECHNOLOGIES LLC, AV  
TECHNOLOGIES LLC, IP INNOVATION  
LLC, and TECHNOLOGY LICENSING  
CORPORATION,

Plaintiffs,

v.

BARCO N.V., MIRANDA  
TECHNOLOGIES, LG PHILIPS LCD, LTD.,  
TOSHIBA CORPORATION, TOSHIBA  
AMERICA CONSUMER PRODUCTS,  
L.L.C., LG ELECTRONICS INC., and  
SYNTAX-BRILLIAN CORPORATION,

Defendants.

Misc. No.  
Civil No. 05 C 5620\*

\*In the U.S. District Court, Northern District  
of Illinois, Eastern Division

DECLARATION OF JAMES M.  
BARRETT IN SUPPORT OF NON-  
PARTY PIXELWORKS, INC.'S MOTION  
TO QUASH DEPOSITION SUBPOENA  
AND MOTION FOR SANCTIONS

I, James M. Barrett, hereby declare that I have personal knowledge of the matters set forth in this Declaration and am competent to testify to them:

1. I am an attorney at Ater Wynne LLP and represent nonparty Pixelworks, Inc. ("Pixelworks"). I make this declaration in support of Pixelworks' Motion to Quash Deposition

Subpoena and Motion for Sanctions.

2. Plaintiffs first filed this patent infringement suit in September 2005 in the U.S. District Court for the Northern District of Illinois, Eastern Division. Plaintiffs' current operative complaint is the Corrected Fourth Amended Complaint ("FAC"), filed August 15, 2007. A true and correct copy of the FAC is attached as Exhibit 1.

3. The parties have been taking discovery for almost two years. Discovery is scheduled to close in a matter of weeks on September 28, 2007.

4. Plaintiffs initially served Pixelworks with a third-party document subpoena on March 12, 2007. Pixelworks timely objected to the subpoena, which propounded massively overbroad and burdensome request for confidential and proprietary information. The Company has refused to produce documents until its objections are addressed. A true and correct copy of the document subpoena is attached as Exhibit 2.

5. Instead of conferring with Pixelworks, on August 15, 2007, Plaintiffs served Pixelworks with the third party deposition subpoena. A true and correct copy of the deposition subpoena is attached as Exhibit 3.

6. The new deposition subpoena purports to require the Company to prepare witnesses under Fed. R. Civ. P. 30(b)(6) to testify about many of the same massively overbroad categories of information that Plaintiffs identified in their document subpoena. A simple comparison reveals a cut-and-paste job; Plaintiffs copied their document requests into the new subpoena and slightly modified them to require testimony instead of documents. Plaintiffs made no attempt to confer with Pixelworks about a mutually agreeable deposition date. Neither did they attempt to narrow the information sought, even though deposition topics must be described with "reasonable particularity." Fed. R. Civ. P. 30(b)(6).

7. On August 20, 2007, Pixelworks served Plaintiffs' counsel with detailed objections and advised them in writing that the deposition subpoena was facially defective in several respects. Pixelworks also apprised Plaintiffs' counsel that it would seek sanctions for

their failure to take reasonable steps to avoid undue burden and expense under Fed. R. Civ. P. 45(c). A true and correct copy of the August 20, 2007 letter from Pixelworks' counsel to Plaintiffs' counsel enclosing objections is attached as Exhibit 4.

8. Plaintiffs' counsel did not make themselves available to confer about Pixelworks' objections until August 27, 2007. At that time, Plaintiffs' counsel refused to narrow the scope of the deposition topics or make modifications of any kind. Rather, they stated that they could not narrow the deposition topics without first receiving documents from Pixelworks in response to the document subpoena.

9. Pixelworks is entitled to recover its reasonable attorney fees in preparing its motion to quash as a sanction against Plaintiffs under Fed. R. Civ. P. 45(c). Pixelworks anticipates that it will have incurred \$8,342.50 in legal fees, which represents 35.5 hours of its attorney's time in conferring with counsel and research, drafting, and arguing the motion, at \$235/hour.

10. The rate of \$235/hour charged by Ater Wynne LLP ("Ater Wynne") is commensurate with similar litigation law firms in Portland, Oregon. This Court has instructed attorneys to refer to the 2002 Oregon State Bar Economic Survey to compute the appropriate billing rate for an attorney fee award. According to that survey, in 2002 the billing rates for Portland Attorneys with four to six years experience ranged from \$165 to \$221 per hour. A more recent scientific survey of billing rates actually charged by firms of similar size and standing was performed by Serena Morones, a local CPA. The customized survey concludes that, as of January 1, 2006, the average billing rate of attorneys at similarly sized firms who have similar experience is the declarant is \$214/hour. A true and correct copy of the Morones Survey is attached as Exhibit 5.

11. With respect to the standing and skill of declarant, I am a senior litigation associate with six years of experience and primary responsibility for handling this matter. Prior to private practice, I clerked for the Honorable Thomas A. Balmer of the Oregon Supreme Court.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

DATED this 28th day of August, 2007.

s/James M. Barrett  
JAMES M. BARRETT

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF JAMES M. BARRETT  
IN SUPPORT OF NON-PARTY PIXELWORKS, INC.'S MOTION TO QUASH DEPOSITION  
SUBPOENA AND MOTION FOR SANCTIONS on the following:

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by [X] mailing and [X] facsimile a true and correct copy thereof on the date stated below; and

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by [X] mailing a true and correct copy thereof on the date stated below.

DATED this 28th day of August, 2007.

s/James M. Barrett  
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