

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN MOTION-SENSITIVE SOUND  
EFFECTS DEVICES AND IMAGE DISPLAY  
DEVICES AND COMPONENTS AND  
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-773**

**ORDER NO. 53: INITIAL DETERMINATION GRANTING JOINT MOTION TO  
TERMINATE INVESTIGATION AS TO RESPONDENT 3M  
COMPANY; AND**

**ORDER DENYING MOTION DOCKET NO. 773-034 AS MOOT**

(November 17, 2011)

On October 14, 2011, Complainant Ogma, LLC (“Ogma”) and Respondent 3M Company (“3M”) filed a motion to terminate 3M from the Investigation based on a settlement. (Motion Docket No. 773-064.) Movants explain that they have executed a settlement agreement (“Agreement”), which they attached to their motion. (Mot. Mem. at 1.) Other than the Agreement, Ogma and 3M represent that there are no agreements, written or oral, express or implied between them concerning the subject matter of this Investigation. (*Id.*) In support of their motion, Ogma and 3M argue that termination as to 3M would not be adverse to the public interest. (*Id.* at 1-2.)

On October 18, 2011, the Commission Investigative Staff (“Staff”) responded in support of Ogma and 3M’s motion. Staff notes that termination is appropriate and would not run counter to the public interest. (Staff Resp. at 3-4.)

The Commission’s Rules permit termination of the Investigation in whole or in part with respect to one or more respondents on the basis of a settlement. 19 C.F.R. § 210.21(b)(1). In satisfaction of 19 C.F.R. § 210.21(b)(1), as noted above, Ogma and 3M have attached both public

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and confidential versions of the Agreement, and have made a statement that they have no other agreements concerning the subject matter of this Investigation. (*Id.*)

In the case of a proposed termination by settlement agreement,

the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

19 C.F.R. § 210.50(b)(2). Ogma, 3M, and Staff believe that granting the joint motion would not be contrary to the public interest. (Mot. Mem. at 1-2; Staff Resp. at 3.) Furthermore, termination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest and will conserve public and private resources.

For good cause shown, it is the Initial Determination of the Administrative Law Judge that the motion to terminate the Investigation as to Respondent 3M Company (Motion Docket No. 773-064) should be GRANTED. The Investigation remains pending against Respondents JAKKS Pacific, Inc.; Kyocera Communications, Inc.; Nintendo Co., Ltd.; Nintendo of America, Inc.; Toshiba Corporation; and Toshiba America Information Systems, Inc. Because the Investigation is no longer pending against 3M, the Administrative Law Judge finds that 3M's renewed motion for summary determination of no violation of Section 337 on the basis of a license (Motion Docket No. 773-034) should be DENIED as moot.

This Initial Determination, along with a non-confidential copy of the Agreement,<sup>1</sup> is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall

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<sup>1</sup> The Commission's Rules require both confidential and public versions of agreements. See 19 C.F.R. § 210.21(b)(1). Copies of the confidential or public versions of the Agreement are attached to the respective confidential and public

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become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

**SO ORDERED.**



E. James Gildea  
Administrative Law Judge

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**Attachment A**

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (this "Agreement") is made and entered into as of October 5, 2011 (the "Effective Date") by and between Plaintiff Ogma LLC, a company organized and existing under the laws of Texas, having offices at 3301 W. Marshall Ave., Suite 303, Longview, Texas 75604 ("Plaintiff") on the one hand; and 3M Company, a corporation organized and existing under the laws of Delaware and having offices at 3M Center, St. Paul, MN 55144-1000 ("Defendant"), and 3M Innovative Properties Company ("3M IPC"), a corporation organized and existing under the laws of Delaware, having offices at 3M Center, St. Paul, MN 55144-1000 on the other hand. Plaintiff and Defendant and 3M IPC are individually referred to herein as a "party," and collectively as the "parties."

**WITNESSETH**

WHEREAS, Plaintiff has filed an action against Defendant for infringement of at least one of the Patents in Suit (as that term is defined below) in an action styled *Ogma, LLC v. 3M Company, et al.*, Civil Action No. 2:11-cv-178, pending in the United States District Court for the Eastern District of Texas, Marshall Division (the "Eastern District of Texas Action");

WHEREAS, Plaintiff, as Complainant, has named Defendant as a Respondent in a complaint for infringement of at least one of the Patents in Suit (as that term is defined below) in an investigation styled In the Matter of *Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same*, Investigation No. 337-TA-787, now consolidated into Investigation No. 337-TA-773, pending in the United States International Trade Commission (the "ITC Investigation" and, collectively with the Eastern District of Texas Action, the "Litigation");

WHEREAS, Defendant has denied liability in the Litigation;

WHEREAS, the parties wish to enter into this Agreement;

WHEREAS, Defendant desires to obtain a covenant not to sue and license under the Patents in Suit (as that term is defined below), Plaintiff desires to grant such rights, and the parties desire to settle the Litigation pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above promises and mutual covenants hereinafter contained, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

"Defendant Affiliate" of a party means any corporation, company, or other business entity that is owned, controlled directly or indirectly by, or under common control with, Defendant, and any divisions thereof. For purposes of this definition, "control" means the

possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or other interest including without limitation ownership of any warrant, option or other interest, by contract or otherwise (as to which ownership of more than 50% conclusively establishes control), whether control is obtained or acquired prior to or after the Effective Date. JM IPC is for the purposes of this agreement a Defendant Affiliate.

"Plaintiff Affiliates" means (a) any branch, division or operating unit within Ogma LLC; (b) any corporation, company, joint venture, partnership, firm, subsidiary, or other entity formerly, now, or hereafter controlled by Ogma LLC, where "control" means the ownership of at least 50% of the voting equity (either directly or indirectly through one or more wholly-owned subsidiaries) or, in the case of a non-corporate person, equivalent interests of such person.

"Licensed Products" means any and all past, current and future products, services, systems, technologies, software, hardware, combinations, components, applications, modules, processes, solutions, or methods of Defendant or Defendant Affiliates that infringed or practiced or, alone or in combination with other components, products, or processes, whether or not such other components, products, or processes are made, sold, or used by Defendant, would infringe or practice one or more claims of the Licensed Patents that (i) has not been revoked or held unenforceable or invalid by a decision of a court or other government agency or competent jurisdiction that is unappealable or unappealed within the time allowed for appeal, or (ii) has not been abandoned, disclaimed or admitted to be invalid or unenforceable through reissue or disclaimer.

"Patents in Suit" means the United States patents listed on the attached Exhibit A, and (i) all other patents and patent applications (and all patents resulting from such patent applications) owned by, filed by or on behalf of, or assigned to Plaintiff prior to or as of the Effective Date, or as to which Plaintiff holds any actual or potential enforcement rights, or the right to grant licenses under or covenants not to sue, prior to or as of the Effective Date; (ii) all patent applications (and patents resulting from such patent applications) that have the same specification, in whole or in part, as the patents or patent applications set forth in the foregoing; (iii) all patents and patent applications (and all patents resulting from such patent applications) that Plaintiff owned, or had the right to enforce, license or covenant not to sue prior to or as of the Effective Date; (iv) all other patents and patent applications (and all patents resulting from such patent applications) to which Plaintiff acquires ownership or enforcement rights after the Effective Date that cover products or services sold by Defendant prior to or as of the Effective Date; and (v) all patents, divisions, continuations, continuations-in-part, foreign or international counterparts, reissues and/or reexaminations of any of the foregoing, and/or all other patents and patent applications claiming the benefit of the filing date in whole or in part from any of the foregoing.

"Person" means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization or other legal or governmental entity.

"Third Party" means a Person other than a party to this Agreement.

## ARTICLE II

LICENSE RELEASES AND COVENANTS

2.1. License. Plaintiff for itself and for Plaintiff Affiliates, its and their respective successors, licensees and assigns, and those in privity with any one of the foregoing hereby grants to Defendant and Defendant Affiliates a fully paid-up, non-exclusive, irrevocable, worldwide license to make, have made, use, have used, sell, have sold, offer for sale, have offered for sale, provide, have provided, import or otherwise exploit in any manner the Licensed Products under the Patents in Suit.

2.2. Plaintiff's Release of Defendant. Plaintiff, for itself and for Plaintiff Affiliates, its and their respective successors, licensees and assigns, and those in privity with any one of the foregoing, releases Defendant and Defendant Affiliates, and their respective successors, assigns, officers, directors, shareholders, managers, members, employees, agents, experts, consultants, attorneys, customers, suppliers, end users, technology partners, retailers and distributors, from any and all liability prior to the Effective Date related to: (i) infringement of the Licensed Products under the Patents in Suit; (ii) the conduct of the Litigation; (iii) the conduct of settlement negotiations (except for representations or obligations expressly included in this Agreement); and (iv) any and all other claims that could have been made by Plaintiff against Defendant. Except as specified in this Section 2.2 and elsewhere in this Agreement, the release set forth in this Section 2.2 expressly excludes the products and services of any Third Party.

2.3. Plaintiff's Covenant Not to Sue Defendant. In consideration of the terms herein, Plaintiff covenants not to sue Defendant or Defendant Affiliates for infringement of the Patents in Suit with respect to the Licensed Products. In consideration of the terms herein, Plaintiff further covenants not to sue Defendant's or Defendant Affiliates' customers, suppliers, end users, technology partners, retailers and distributors for infringement of the Patents in Suit solely with respect to making, having made, using, selling, offering for sale, providing, licensing, offering for license, importing or otherwise disposing of the Licensed Products. Except as specified in this Section 2.3 and elsewhere in this Agreement, the covenant set forth in this Section 2.3 expressly excludes the products and services of any Third Party.

2.4. Defendant's Release of Plaintiff. Defendant releases Plaintiff and Plaintiff Affiliates, officers, directors, managers, members, employees, agents, experts, consultants and attorneys from liability related to the conduct of the Litigation and the conduct of settlement negotiations (except for representations or obligations expressly included in this Agreement).

2.5. Releases. The releases in this Agreement include an express, informed, knowing and voluntary waiver and relinquishment to the fullest extent permitted by law. In this connection, the parties acknowledge that they may have sustained damages, losses, costs or expenses which are presently unknown and unsuspected and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. The parties hereto further acknowledge that they have negotiated this Agreement taking into account presently unsuspected and unknown claims, counterclaims,

causes of action, damages, losses, costs and expenses, and the parties hereto voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on general releases. The parties voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on releases. Specifically, each party hereby expressly waives any rights it may have under California Civil Code Section 1542 (or any other law) which provides that:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”**

### ARTICLE III

#### COVENANTS

3.1. Validity. Defendant covenants, represents and warrants that it shall not contest or assist in the contest in any forum, including federal courts, whether under 28 U.S.C. §§ 2201-2202 or not, the United States Patent and Trademark Office, and/or the International Trade Commission, that the Patents in Suit are valid and enforceable, other than in any subsequent dispute or proceeding initiated by Plaintiff or Plaintiff Affiliates against Defendant or any of Defendant Affiliates, or in any subsequent dispute or proceeding against Defendant or Defendant Affiliates or any of their customers, suppliers, end users, technology partners, retailers or distributors, that relate to Licensed Products. Nothing herein should be construed as an admission by Defendant that any claim of either of the Patents in Suit is valid or enforceable.

3.2. No Other Rights / No Exhaustion. No rights or covenants are granted under any patents except as expressly provided herein, whether by implication, estoppel or otherwise. Except as set forth herein, no right to grant covenants, rights, sublicenses or to become a foundry for Third Parties is granted under any of the rights set forth in this Agreement. The parties further agree that, except as expressly set forth herein, this Agreement does not cut off Plaintiff's rights to enjoin, control or extract royalties with respect to methods, systems, products, services and/or components of any Third Party with regard to products that are not Licensed Products.

### ARTICLE IV

#### DISMISSAL OF LITIGATION

4.1. Within five (5) business days after the payment of the consideration to Plaintiff under Section 5.1 below, the parties shall cause their respective counsel to execute and file the stipulated motion in the form set forth in Exhibit B dismissing with prejudice all claims between the parties in the Eastern District of Texas Action. Within five (5) business days after

the payment of the consideration to Plaintiff under Section 5.1 below, the parties shall cause their respective counsel to execute and file in the ITC Investigation a joint motion to terminate the investigation and memorandum of points and authorities in support thereof in the forms set forth in Exhibits C and D. The parties shall promptly proceed with any and all additional procedures needed to dismiss with prejudice and/or terminate all aspects of the Litigation. The parties agree that the settlement of the Litigation is intended solely as a compromise of disputed claims, counterclaims and defenses.

4.2. The parties acknowledge and agree that this Agreement is enforceable according to its terms with respect to final dismissal with prejudice of all claims and counterclaims in the Litigation.

4.3. The parties agree that they shall bear their own costs and attorneys' fees relating to the Litigation and to the negotiation of this Agreement.

## ARTICLE V

### CONSIDERATION

5.1. In consideration of the license, covenant and other representations contained herein and the dismissal and/or termination by Plaintiff of the Litigation hereunder, Defendant agrees to pay to Plaintiff a one-time payment in the amount of [REDACTED] payable by Defendant to Plaintiff by wire transfer to an account specified by Plaintiff and attached hereto as Exhibit E no later than fifteen (15) business days after the Effective Date.

## ARTICLE VI

### TERM

6.1. Term. The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the last-to-expire of the Patents in Suit, unless earlier terminated as set forth below.

6.2. Termination. If and only if a party or an assignee of a party materially breaches Section 2, 3, 4, 5 or 7 of this Agreement, and does not cure such breach within sixty (60) days after written notice thereof, the covenants granted by Section 3 of this Agreement may be terminated by the non-breaching party upon written notice to that effect at any time after such sixty (60) day period so long as the breach remains uncured.

6.3. Survival. In the event of termination pursuant to Section 6.2, the covenants granted to the breaching party hereunder shall terminate as of the date that such termination takes effect and the non-breaching party shall retain its remedies for such breach. The provisions of Articles I, II (II only as applicable to the non-breaching party), III (III only as

applicable to the non-breaching party), IV, V, VI, VII and VIII will survive any termination of this Agreement.

## ARTICLE VII

### ASSIGNMENT

7.1. This Agreement may not be transferred or assigned except: (i) in whole by Defendant to a Defendant Affiliate; (ii) in whole by Defendant to a Third Party that acquires, assumes, or succeeds to the control of all or substantially all of the assets of Defendant's business related to the subject matter of this Agreement (by merger, stock purchase, purchase and assumption of assets and liabilities, or otherwise), except that, in such event, the license, release, covenant not to sue and other immunities granted herein shall not apply in any way to the past, present, or future products or services that were actively being sold or licensed by such Third Party or its Affiliates prior to the transfer or assignment; or (iii) in part by Defendant as part of a divestiture, on or after the Effective Date, of some or all of Defendant's business related to the subject matter of this agreement ("Divested Business"), except that, in such event, the license, release, covenant not to sue and other immunities granted herein shall not apply in any way to the past, present, or future products or services that were actively being sold or licensed by any Third Party or its Affiliates, if any, that may acquire the Divested Business.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### 8.1. Representations and Warranties.

(a) Plaintiff represents and warrants as of the Effective Date that: (i) it, and the Person executing on its behalf, have the power and authority to enter this Agreement, and bind Plaintiff to each and every obligation hereof; (ii) Plaintiff owns the Patents in Suit, and has the right to grant the license, covenant, and all other rights detailed herein with respect to the Patents in Suit of the full scope set forth herein without payment of any consideration to any Third Party; and (iii) it has not assigned or otherwise transferred to any other Person any rights to the Patents in Suit that would prevent Plaintiff from entering into this Agreement.

(b) Defendant acknowledges, accepts, represents and warrants that: (i) it, and the Person executing on its behalf, have the power and authority to enter this Agreement, and bind Defendant to each and every obligation hereof; (ii) it understands that it is has exclusively negotiated and is contracting with a limited liability entity, and acknowledges it is not contracting (directly or indirectly, by any legal theory or otherwise) with any other Person or Third Party; and (iii) that it has been advised by Plaintiff that the Patents in Suit may be subject to one or more reexaminations or other action by the United States Patent and Trademark Office and that Plaintiff is making no representations or warranties with respect to the Patents in Suit other than as expressly set forth in this Section 8.1(a).

(c) Nothing contained in this Agreement shall be construed as:

(i) an agreement by either party to bring or prosecute actions or suits against Third Parties for infringement, or conferring any right to the other party to bring or prosecute actions or suits against Third Parties for infringement;

(ii) conferring any right to the other party to use in advertising, publicity, or otherwise, any trademark, trade name or names of either party, or any contraction, abbreviation or simulation thereof without the prior written consent of the other party;

(iii) conferring by implication, estoppel or otherwise, upon either party, any right (including a license) under other patents or any other intellectual property rights except for the rights expressly granted hereunder;

(iv) an admission or acknowledgement by Defendant that any claim of either of the Patents in Suit is valid or enforceable or covers any of the Licensed Products; or

(v) an obligation to furnish any technical information or know-how.

8.2. Confidentiality. From and after the Effective Date, neither party shall disclose the terms of this Agreement except:

(a) with the prior written consent of the other party;

(b) to any governmental body having jurisdiction and specifically requiring such disclosure;

(c) in response to a valid subpoena or as otherwise may be required by law under the highest level of confidentiality provided by the relevant court's protective order or local rules;

(d) for the purposes of disclosure in connection with the Securities and Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, and any other reports filed with the Securities and Exchange Commission, or any other filings, reports or disclosures that may be required under applicable laws or regulations;

(e) to a party's, or its Affiliates', accountants, legal counsel, tax advisors and other financial and legal advisors, subject to obligations of confidentiality and/or privilege at least as stringent as those contained herein;

(f) as required during the course of litigation and subject to protective order, provided however, that any production under a protective order would be protected under the highest applicable confidentiality designation in the Litigation or any other lawsuit; or

(g) with obligations of confidentiality at least as stringent as those contained herein, to a counterparty in connection with a proposed merger, acquisition, financing or similar transaction;

(h) by Defendant or Defendant Affiliates to a supplier, customer, distributor, or other business partner, but only to the extent reasonably necessary to satisfy such business partner that Defendant or Defendant Affiliates has a license under the Patents in Suit, and/or to assist such business partner to respond to any claim made against such business partner that may be released or proscribed by the terms of this Agreement;

(i) by Defendant or Defendant Affiliates to an entity who owes, or is claimed to owe, to Defendant or Defendant Affiliates a duty to defend and/or indemnify 3M with respect to one or more of the claims asserted in the Litigation, to the extent reasonably necessary to enforce such obligation, subject to obligations of confidentiality and/or privilege at least as stringent as those contained herein;

provided, however, that with regard to any such disclosure pursuant to paragraph (c) hereof, the disclosing party shall promptly notify the other party, and that prior to any such disclosure pursuant to paragraphs (c) and/or (g) hereof, the disclosing party shall take reasonable actions in an effort to minimize the nature and extent of such disclosure. In furtherance hereof, each party will direct its counsel to promptly return to the other party's counsel any documents provided to it or its counsel by the other party or its counsel.

Notwithstanding anything to the contrary in this agreement, this Agreement imposes no obligation upon a recipient with respect to information that recipient can establish (a) was in recipient's possession before receipt from discloser; (b) is or becomes available to the public through no fault of recipient; (c) is received in good faith by recipient from a third party and is not subject to an obligation of confidentiality owed to the third party; or (d) is independently developed by recipient without reference to information received hereunder.

8.3. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or if dispatched by prepaid air courier with package tracing capabilities or by registered or certified airmail, postage prepaid, addressed as follows:

**If to Plaintiff:**

c/o Ogma LLC  
3301 W. Marshall Ave., Suite 303  
Longview, Texas 75604

**Copy to:**

Spangler Law P.C.  
ATTN: Andrew Spangler  
208 N. Green St., Suite 300  
Longview, Texas 75601  
Fax: (903) 553-0403

spaniel@spanielerlawpc.com

**If to Defendant:**

c/o General Manager - 3M Touch Systems  
3M Center

2501 Hudson Road  
St. Paul, Minnesota 54144-1000

Copy to:

General Manager – MISD  
3M Center  
2501 Hudson Road  
St. Paul, Minnesota 55144-1000

And,

Chief Intellectual Property Counsel  
Office of Intellectual Property Counsel  
3M Innovative Properties Company  
3M Center 220-9E-01  
2501 Hudson Road  
St. Paul, Minnesota 55144-1000

Such notices shall be deemed to have been given: (a) on the date delivered if by hand delivery; (b) on the date delivered as shown by the delivery receipt or tracking information if by overnight courier or delivery service; and (c) on the date of delivery as shown by the return receipt if by registered or certified mail. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

8.4. Publicity. Neither party will issue a press release or make any other announcement regarding this Agreement or the relationship contemplated herein unless both parties provide prior consent in writing. The parties shall direct their representatives not to make any disclosures of the terms of this Agreement. Notwithstanding the foregoing and Section 8.2, upon inquiry either party may state that Plaintiff and Defendant have entered into a settlement agreement regarding the Litigation.

8.5. After-Acquired Affiliates. With respect to Defendant Affiliates that become Affiliates of Defendant after the Effective Date, the licenses, releases, covenants not to sue and other rights granted herein as for such Defendant Affiliate shall be effective as if such entity was a Defendant Affiliate on the date this Agreement was executed but said licenses.

releases, covenants not to sue and other rights extinguish if an After-Acquired Affiliate is no longer a Defendant or Defendant Affiliate, subject to provisions in Section 7.1.

8.6. Governing Law. This Agreement and matters connected with the performance thereof shall be construed, interpreted, applied and governed in all respects in accordance with the laws of the United States of America and the State of Texas, without reference to conflict of laws principles.

8.7. Sophisticated Parties Represented by Counsel. The parties each acknowledge, accept, warrant and represent that (i) they are sophisticated parties represented at all relevant times during the negotiation and execution of this Agreement by counsel of their choice, and that they have executed this Agreement with the consent and on the advice of such independent legal counsel, and (ii) they and their counsel have determined through independent investigation and robust, arm's-length negotiation that the terms of this Agreement shall exclusively embody and govern the subject matter of this Agreement.

8.8. Bankruptcy. Each party irrevocably waives all arguments and defenses arising under 11 U.S.C. 365(c)(1) or successor provisions to the effect that applicable law excuses the party, other than the debtor, from accepting performance from or rendering performance to an entity other than the debtor or debtor in possession as a basis for opposing assumption of the Agreements by the other party in a case under Chapter 11 of the Bankruptcy Code to the extent that such consent is required under 11 U.S.C. § 365(c)(1) or any successor statute. Any change of control resulting from any such bankruptcy proceeding shall remain subject to Article VII above.

8.9. Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and be enforceable. The parties agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent of such provision.

8.10. Entire Agreement. The parties acknowledge, accept, warrant and represent that (i) this is an enforceable agreement; (ii) this Agreement embodies the entire and only understanding of each of them with respect to the subject matter of the Agreement, and merges, supersedes and cancels all previous representations, warranties, assurances, conditions, definitions, understandings or any other statement, express, implied, or arising by operation of law, whether oral or written, whether by omission or commission between and among them with respect to the subject matter of the Agreement; (iii) no oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement; (iv) the terms and conditions of this Agreement may be altered, modified, changed or amended only by a written agreement executed by duly authorized representatives of Plaintiff and Defendant; (v) the language of this Agreement has been approved by counsel for each of them, and shall be construed as a whole according to its fair meaning; and (vi) none of the them (nor their respective counsel) shall be deemed to be the draftsman of this Agreement in any action which may hereafter arise with respect to the Agreement.


8.11. Modification; Waiver. No modification or amendment to this Agreement, nor any waiver of any rights, will be effective unless assented to in writing by both parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

8.12. Construction; Language. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." The headings in this Agreement will not be referred to in connection with the construction or interpretation of this Agreement. This Agreement is in the English language only, which language shall be controlling in all respects, and all notices under this Agreement shall be in the English language.

8.13. Counterparts. This Agreement may be executed in counterparts or duplicate originals, both of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. This Agreement may be executed by facsimile signatures and such signatures shall be deemed to bind each party as if they were original signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed below by their respective duly authorized officers.

Ogma, LLC

By: 

Name: Matthew G. Cunningham

Title: C.F.O.

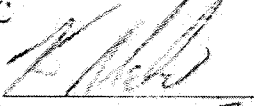
3M Company

By: 

Name: MARK COJW

Title: VP/GM 3M MISDIVISION

3M IPC

By: 

Name: Kevin Rhodes

Title: President

3M ACN: 201103117

*DRAFT*

**EXHIBIT A  
LIST OF "PATENTS IN SUIT"**

**REDACTED**

EXHIBIT B

STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE

The Plaintiff, Ogma LLC, and Defendant, 3M Company, pursuant to Fed. R. Civ. P. 41(a)(2) and (c), hereby move for an order dismissing all claims and counterclaims in this action WITH PREJUDICE, subject to the terms of their Settlement Agreement, dated August \_\_, 2011, with each party to bear its own costs, expenses and attorneys fees.

ORDER OF DISMISSAL WITH PREJUDICE

CAME ON THIS DAY for consideration of the Stipulated Motion for Dismissal With Prejudice of all claims and counterclaims asserted between Plaintiff, Ogma LLC, and Defendant, 3M Company, in this case, and the Court being of the opinion that said motion should be GRANTED, it is hereby

ORDERED, ADJUDGED AND DECREED that all claims and counterclaims asserted in this suit between Plaintiff, Ogma LLC, and Defendant, 3M Company, are hereby dismissed with prejudice, subject to the terms of the Settlement Agreement between them, dated August \_\_, 2011.

It is further ORDERED that all attorneys' fees and costs are to be borne by the party that incurred them.

EXHIBIT C

**JOINT MOTION TO TERMINATE THE INVESTIGATION WITH RESPECT TO  
RESPONDENT 3M COMPANY**

Pursuant to Commission Rule 210.21(c), Complainant Ogma LLC and Respondent 3M Company (the "3M Respondent") hereby move to terminate this investigation with respect to the 3M Respondent, on the basis of the parties' Settlement Agreement.

For the reasons set forth in the Memorandum of Points and Authorities submitted herewith, the moving parties respectfully request that the motion be granted and that the investigation be terminated as to the 3M Respondent only.

EXHIBIT D

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION  
TO TERMINATE THE INVESTIGATION WITH RESPECT TO RESPONDENT 3M  
COMPANY

Pursuant to Commission Rule 210.21 (c), Complainant Ogma LLC and Respondent 3M Company (the "3M Respondent") have moved to terminate this investigation with respect to the 3M Respondent, on the basis of a Settlement Agreement entered by Complainant and 3M Respondent on August \_\_, 2011. The parties request that this Joint Motion be granted.

Commission Rule 210.21(a) provides, in relevant part:

Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all of the respondents.

The Settlement Agreement has been executed by the parties. There are no other agreements, written or oral, express or implied between the parties concerning the subject matter of this investigation.

Settlement agreements are generally within the public interest. *See, e.g., Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, and Products Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 12, 2000). The parties respectfully submit that the attached Settlement Agreement will not have any adverse effect on the public health and welfare or competitive conditions in the United States.

For the reasons set forth above, the parties respectfully request that the joint motion to terminate with respect to the 3M Respondent be granted pursuant to 19 C.F.R. 210.21(c).

*DRAFT*

**EXHIBIT E**  
**Bank Wiring Instructions**

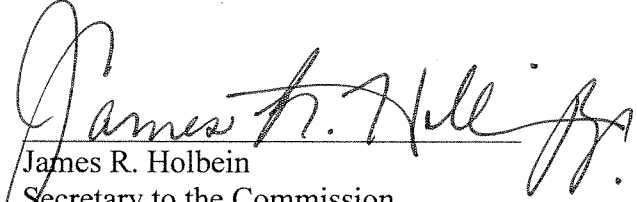
**REDACTED**

**CERTAIN MOTION-SENSITIVE  
SOUND EFFECTS DEVICES AND  
IMAGE DISPLAY DEVICES AND  
COMPONENTS AND PRODUCTS  
CONTAINING SAME**

337-TA-773

**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon, the Commission Investigative Attorney, **Vu Bui, Esq.**, and the following parties as indicated on November 17, 2011.

  
James R. Holbein  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, SW, Room 112A  
Washington, D.C. 20436

**ON BEHALF OF COMPLAINANT OGMA, LLC**

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 Via Overnight Mail  
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 Via Overnight Mail  
 Via First Class Mail  
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**CERTAIN MOTION-SENSITIVE  
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IMAGE DISPLAY DEVICES AND  
COMPONENTS AND PRODUCTS  
CONTAINING SAME**

337-TA-773

**ON BEHALF OF RESPONDENT JAKKS PACIFIC, INC.**

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**ON BEHALF OF RESPONDENTS TOSHIBA CORPORATION AND TOSHIBA AMERICA INFORMATION SYSTEMS, INC.:**

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**CERTAIN MOTION-SENSITIVE  
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CONTAINING SAME**

**337-TA-773**

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