

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. 36: INITIAL DETERMINATION GRANTING JOINT MOTION TO  
TERMINATE INVESTIGATION AS TO RESPONDENTS OPTOMA  
CORPORATION AND OPTOMA TECHNOLOGY, INC.**

(September 6, 2011)

On August 25, 2011, Complainant Ogma, LLC (“Ogma”) and Respondents Optoma Corporation and Optoma Technology, Inc. (collectively, “Optoma”) filed a motion to terminate Optoma from the Investigation based on a settlement. (Motion Docket No. 773-040.) Movants explain that they have executed a settlement agreement (“Agreement”), which they attached to their motion. (Mot. at 1.) Other than the Agreement, Ogma and Optoma represent that there are no agreements, written or oral, express or implied between them concerning the subject matter of this Investigation. (Mot. Mem. at 1.) In support of their motion, Ogma and Optoma argue that termination as to Optoma would not be adverse to the public interest. (*Id.* at 1-2.) On August 30, 2011, movants filed a revised public version of their motion.

On August 31, 2011, the Commission Investigative Staff (“Staff”) responded to Ogma and Optoma’s motion. Staff supports the motion on the basis that it complies with Commission Rule 210.21(b). (Staff Resp. at 1-2.) Staff further notes that termination would not run counter to the public interest. (*Id.* at 3.)

The Commission’s Rules permit termination of the Investigation in whole or in part with

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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 Optoma have attached both public 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.

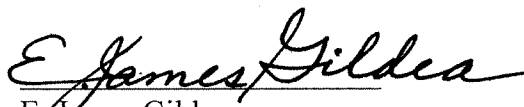
19 C.F.R. § 210.50(b)(2). Ogma, Optoma, and Staff believe that granting the joint motion would not be contrary to the public interest. (Mot. Mem. at 2; Staff Resp. at 3.) Furthermore, termination of litigation under these circumstances as an alternative method of dispute resolution is generally in the 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 Optoma Corporation and Optoma Technology, Inc. (Motion Docket No. 773-040) should be GRANTED. The Investigation remains pending against Respondents Activision Blizzard, Inc.; Canon, Inc.; Canon USA, Inc.; Jakks Pacific, Inc.; Kyocera Communications, Inc.; Lenovo (United States), Inc.; Lenovo Group Ltd.; Lenovo (Singapore) Pte. Ltd.; Nintendo Co., Ltd.; Nintendo of America, Inc.; Nyko Technologies, Inc.; 3M Company, Casio America, Inc., Casio Computer Co., Ltd., Christie Digital Systems USA, Inc., Intec, Inc., Mitsubishi Electric Corporation, Mitsubishi Electric & Electronics USA, Inc., Performance Designed Products LLC, Planar Systems, Inc., Supersonic, Inc., Toshiba Corporation, and Toshiba America Information Systems, Inc.

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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 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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<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 versions of this Initial Determination.

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**Attachment A**

# EXHIBIT 1

## PUBLIC VERSION OF SETTLEMENT AGREEMENT

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this "Agreement") is made and entered into as of August 13, 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 Optoma Corporation, a corporation organized and existing under the laws of Taiwan, having offices at 5F, No. 108, Minchiuan Rd., Shindian Dist., New Taipei City 231, Taiwan and Optoma Technology, Inc., a corporation organized and existing under the laws of California, having offices at 3178 Laurelview Court, Fremont, California 94538 (collectively with their Affiliates (as that term is defined below) referred to as "Optoma"), on the other hand. Plaintiff and Optoma are individually referred to herein as a "party," and collectively as the "parties."

### WITNESSETH

WHEREAS, Plaintiff has filed an action against Optoma Corporation and Optoma Technology, Inc. for infringement of U.S. Patent No. 5,825,427, one of the Licensed Patents (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 "First Eastern District of Texas Action");

WHEREAS, after Plaintiff and Optoma Technology, Inc.'s joint motion to sever and stay Plaintiff's suit against Optoma Technology, Inc. was granted, the court ordered that Plaintiff's claims against Optoma Technology, Inc., in the First Eastern District of Texas Action be severed and re-filed in an action styled *Ogma, LLC v. Optoma Technology, Inc.*, Civil Action No. 2:11-cv-327, pending in the United States District Court for the Eastern District of Texas, Marshall Division (the "Second Eastern District of Texas Action");

WHEREAS, Plaintiff, as Complainant, has named Optoma Corporation and Optoma Technology, Inc. as Respondents in a complaint for infringement of U.S. Patent No. 5,825,427, one of the Licensed Patents 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, consolidated with and integrated into Investigation No. 337-TA-773, pending in the United States International Trade Commission (the "ITC Investigation" and, collectively with the First Eastern District of Texas Action and the Second Eastern District of Texas Action, the "Litigation");

WHEREAS, Optoma Corporation has not been served with summons or process in the First Eastern District of Texas Action;

WHEREAS, Optoma denies liability in the Litigation;

WHEREAS, Optoma wishes to enter into a Settlement Agreement;



WHEREAS, Optoma desires to obtain a release, covenant not to sue and license under the Licensed Patents and to settle the Litigation pursuant to the terms and conditions of this Agreement.

WHEREAS, Plaintiff has advised Optoma that Plaintiff's current licensing philosophy is to provide better pricing to entities that settle prior to key milestones in the Litigation; and

WHEREAS, Plaintiff has advised Optoma that, in the event this matter was pursued through trial, Plaintiff would be seeking damages far in excess of the amount provided for in 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:

"Affiliate" means any entity which controls, is controlled by or under common control with Optoma, whether by equity ownership, contract or any other manner; but in each case such entity shall be deemed to have been or to be an Affiliate only for so long as such ownership or control existed or exists.

"Licensed Products" means the products, components, systems, methods and services made, have made, offered for sale, sold and imported by or for Optoma that practice one or more claims of the Licensed Patents.

"Licensed Patents" means the United States patents listed on the attached Exhibit A and all patent applications and patents worldwide that claim priority, in whole or part, therefrom, and no others.

"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 hereby grants to Optoma a fully paid-up, non-exclusive, worldwide license under the Licensed Patents to make, have made, use, sell, offer for sale, and import Licensed Products.



2.2. Plaintiff Release of Optoma. Plaintiff releases Optoma and their officers, directors, managers, members, employees, agents, experts, consultants, customers, distributors and attorneys from liability prior to the Effective Date related to: (i) infringement of the Licensed Patents solely with respect to the Licensed Products; (ii) the conduct of the Litigation; and (iii) the conduct of settlement negotiations (except for representations or obligations expressly included in this Agreement). The release set forth in this Section 2.2 expressly excludes the products and services of any Third Party to the extent they are not Licensed Products.

2.3. Plaintiff Covenant Not to Sue Optoma. In consideration of the terms herein, Plaintiff covenants not to sue Optoma for infringement of the Licensed Patents solely with respect to the Licensed Products. In consideration of the terms herein, Plaintiff further covenants not to sue Optoma's customers and distributors for infringement of the Licensed Patents solely with respect to using, selling, offering for sale, or importing the Licensed Products. The covenant set forth in this Section 2.3 expressly excludes the products and services of any Third Party to the extent they are not Licensed Products.

2.4. Optoma Release of Plaintiff. Optoma releases Plaintiff and its 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. Optoma Covenant Not to Sue Plaintiff. In consideration of the terms herein, Optoma covenants not to sue Plaintiff for any claims related to the conduct of the Litigation and the conduct of settlement negotiations (except for representations or obligations expressly included in this Agreement).

2.6. 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. Specifically, each party hereby expressly waives any rights it may have under California Civil Code Section 1542 (or any other comparable 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.”**

NA  
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### **ARTICLE III**

#### **COVENANTS**

3.1. Validity. During the period the license, releases and covenants not to sue in favor of Optoma remain in effect, Optoma 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 Licensed Patents are valid and enforceable.

3.2. No Other Rights. No rights or covenants are granted under any patents except as expressly provided herein, whether by implication, estoppel or otherwise. No right to grant covenants, rights, sublicenses or to become a foundry for Third Parties under the Licensed Patents is granted to Optoma under any of the rights set forth in this Agreement. The parties agree that the covenant set forth in Section 2.3 expressly excludes any methods, systems, products, services and/or components of any Third Party to the extent that the foregoing are not Licensed Products. Except with respect to Licensed Products, the parties further agree that 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.

### **ARTICLE IV**

#### **DISMISSAL OF LITIGATION**

4.1. Within five (5) court days after the payment of the consideration to Plaintiff under Section 5.1 below, Plaintiff shall cause its counsel to execute and file a motion in the form set forth in **Exhibit B**, dismissing with prejudice all claims between the parties in the First Eastern District of Texas Action. Within five (5) court 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 a joint motion in the form set forth in **Exhibit C**, dismissing with prejudice all claims between the parties in the Second Eastern District of Texas Action. Within five (5) court 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 a joint motion to terminate the ITC Investigation and memorandum of points and authorities in support thereof in the forms set forth in **Exhibits D and E**. The parties shall promptly proceed with any and all additional procedures needed to dismiss with prejudice the Litigation. The parties agree that the settlement of the Litigation is intended solely as a compromise of disputed claims.

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 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 licenses, covenants and releases granted by Plaintiff and the dismissal by Plaintiff of the Litigation hereunder, Optoma agrees to pay to Plaintiff REDACTED payable by Optoma to Plaintiff no later than five (5) business days after the Effective Date by wire transfer of that same amount REDACTED to an account specified by Plaintiff and attached hereto as Exhibit F.

5.2. The parties agree this is a litigation settlement and no representation is made that the foregoing consideration represents a reasonable royalty for the infringement alleged in the Litigation.

5.3. All taxes imposed as a result of the existence of this Agreement or the performance of the parties hereunder shall be paid by the party required to do so by applicable law.

REDACTED  
REDACTED

## ARTICLE VI

### TERM

6.1. Term. The term of this Agreement shall commence upon the Effective Date and shall continue until each of the Licensed Patents have expired or been held invalid or unenforceable, unless earlier terminated as set forth below.

6.2. Termination. If and only if Optoma or an assignee of Optoma pursuant to Article VII of this Agreement materially breaches this Agreement, and does not cure such breach within thirty (30) days after written notice thereof from Plaintiff, the covenant granted by Article II of this Agreement may be terminated upon written notice to that effect from Plaintiff at any time after such thirty (30) 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. Subject to the foregoing, the provisions of Articles I, II, III, IV, V, VI, VII and VIII will survive any termination of this Agreement.

6.4. Notice. If Optoma believes that Plaintiff is in breach of this Agreement, it will provide written notice thereof to Plaintiff specifically describing the breach, and Plaintiff shall have thirty (30) days after receipt of any such written notice to cure such breach.

## **ARTICLE VII**

### **ASSIGNMENT**

7.1. No Assignment. Optoma may not assign (by contract, operation of law or otherwise) its rights under this Agreement without the prior written consent of Plaintiff, which shall not be unreasonably withheld, conditioned or delayed, provided however, that such consent shall not be required in the event the Optoma wishes to assign or transfer this Agreement in connection with the sale of all or substantially all of its assets or business, whether by sale of assets, merger, consolidation or otherwise. In connection with any permitted assignment or permitted transfer of this Agreement, the assigning or transferring party shall cause its assignee or transferee to expressly assume in writing the obligations of the assigning or transferring party hereunder. In addition, in the event the Plaintiff assigns or transfers the Licensed Patents to any assignee or transferee, the Plaintiff shall cause such assignee or transferee to expressly assume in writing the obligations of the Plaintiff hereunder. Any attempt to assign or transfer this Agreement in contravention of this Section will be void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of each party's respective permitted successors and permitted assigns. Each and every permitted successor and permitted assign to the interests of either party to this Agreement shall hold such interests subject to the terms, conditions and provisions of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

8.1. Representations and Warranties.

(a) Plaintiff represents and warrants as of the Effective Date that: (i) Plaintiff owns the Licensed Patents, and has the right to grant the licenses and make the covenants and releases with respect to the Licensed Patents of the full scope set forth herein without payment of any consideration to any Third Party; (ii) Plaintiff's grant of the licenses and making of the covenants and releases provided herein will not cause Plaintiff to breach any agreement with any Third Party or to violate any court orders or laws or regulations applicable to Plaintiff, (iii) Plaintiff has not assigned or otherwise transferred to any Third Party any rights to the Licensed Patents that would prevent Plaintiff from entering into and performing this Agreement, and (iv) the execution and delivery of this Agreement by Plaintiff has been duly authorized by Plaintiff, and this Agreement has been duly executed by Plaintiff, and (v) this Agreement is and shall be enforceable against Plaintiff in accordance with its terms, subject to bankruptcy and other laws limiting creditors' rights generally, and to principles of equity.

(b) Each of Optoma Corporation and Optoma Technology, Inc. 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 it to each and every obligation hereof; (ii) it understands that it 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; (iii) in no way (directly or indirectly, by implication or under any legal theory or otherwise) has it negotiated or contracted with any other

Person than the Plaintiff; and (iv) it has been advised by Plaintiff that the Licensed Patents 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 Licensed Patents other than as expressly set forth in Section 8.1(a).

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

(i) a warranty or representation by either party that any manufacture, sale, use or other disposition of products by the other party has been or will be free from infringement of any patents;

(ii) 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;

(iii) 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;

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

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

#### 8.2. Disclaimer of Reliance.

(a) Plaintiff, on behalf of itself and its Affiliates, officers, directors, managers, members, shareholders, attorneys and agents (individually and collectively, "Disclaiming Parties"), disclaim any 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, other than as specifically and expressly set forth herein, between Plaintiff and/or the Disclaiming Parties, on the one hand, and the Non-Reliance Parties, as defined below, on the other hand, relating in any way to (a) the Licensed Patents, including without limitation, the validity of the Licensed Patents; (b) the Plaintiff, including without limitation, the ownership of Plaintiff; (c) the Disclaiming Parties, including without limitation, the identity or ownership of the Disclaiming Parties, and the availability, ownership, or value to the Non-Reliance Parties of any of Plaintiff and/or the Disclaiming Parties' patents or other property; (d) the availability, ownership, or value to the Non-Reliance Parties of any patent or other property of Third Parties, and (e) the subject matter of this Agreement (collectively the "Warranties").

(b) As a condition precedent to Plaintiff entering this Agreement, Optoma, on behalf of itself and its Affiliates, officers, directors, managers, members, shareholders, attorneys, and agents (individually and collectively with Optoma, "Non-Reliance

Parties") acknowledge, accept, warrant and represent that (i) other than specifically and expressly made herein, no such Warranties were made, and that in any case, they have not relied upon, will not claim that they have relied upon, and hereby disclaim reliance upon any such Warranties; (ii) Plaintiff and the Disclaiming Parties are disclaiming such Warranties, other than specifically and expressly made herein; (iii) they and their independent counsel are capable of, and indeed have made to their satisfaction, an independent investigation of any and all matters between Plaintiff and/or Disclaiming Parties, on the one hand, and the Non-Reliance Parties, on the other hand, including without limitation, the subject matter of the Warranties, prior to the execution of this Agreement, and have solely relied upon such investigation and the representations made herein in entering this Agreement; (iv) this Agreement embodies the resolution of a long-running dispute, and is (absent a breach of this Agreement) intended to end such dispute, as well as the relationship between the parties; (v) Plaintiff and the Disclaiming Parties, on the one hand, and the Non-Reliance Parties, on the other hand, are not fiduciaries and do not have a confidential relationship; (vi) PLAINTIFF, THE DISCLAIMING PARTIES AND THE NON-RELIANCE PARTIES INTEND TO WAIVE, AND HEREBY DO WAIVE, ANY AND ALL FRAUDULENT INDUCEMENT CLAIMS EXCEPT AS MAY ARISE FROM A MISREPRESENTATION CONTAINED IN OR BREACH OF THIS AGREEMENT, and (vii) Plaintiff and the Disclaiming Parties, have relied upon each and every term of this Section in entering this Agreement.

(c) For the avoidance of doubt, this Section 8.2 shall not act to expand the releases and covenants granted Optoma and their customers and distributors under Sections 2.2 and 2.3 hereof, including without limitation, by including within such releases and covenants therein any patent other than the Licensed Patents or any Person other than the Optoma and their customers and distributors (only with respect to their purchase and/or distribution of Licensed Products).

8.3. Confidentiality. From and after the Effective Date, neither party shall disclose the existence or 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;
- (d) for the purposes of disclosure in connection with any filings, reports or disclosures filed with securities regulators or other governmental agencies, or any other filings, reports or disclosures that may be required under applicable laws or regulations;
- (e) to a party's 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 an "Attorneys Eyes Only" or higher confidentiality designation;

(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; or

(h) Optoma may disclose the existence of this Agreement and terms of Articles 1 and 2 and Section 3.2 hereof to its customers and distributors.

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

8.4. **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 Oigma 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  
spangler@spanglerlawpc.com

**If to Optoma:**

c/o Optoma Corporation  
5F, No. 108, Minchiuan Rd.  
Shindian Dist., New Taipei City  
231, Taiwan

Optoma Technology, Inc.  
3178 Laurelview Court  
Fremont, California 94538

Copy to:

Bingham McCutchen LLP  
Attn: Mary T. Huser, Esq.  
1900 University Avenue  
East Palo Alto, CA 94303  
Fax: (650) 849-4800  
mary.huser@bingham.com

Such notices shall be deemed to have been served when received by addressee. 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.

8.5. Publicity. Neither party will issue a press release or 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 except as permitted in Section 8.3. Notwithstanding the foregoing and Section 8.3, upon inquiry either party may state that Plaintiff and Optoma have entered into a litigation settlement agreement.

REDACTED

REDACTED

REDACTED

REDACTED

8.8. 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 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.

8.9. Bankruptcy. Each party agrees that 11 U.S.C. 365(n) applies to the licenses, covenants and releases granted and provided to Optoma herein.



8.10. 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.

8.11. 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 Optoma, (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, (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, and (vii) resort shall not be made to any of the Warranties with respect to any missing terms touching the subject matter of this Agreement in any way.

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

8.13. 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.

8.14. 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.

8.15. Affiliates. Affiliates of Optoma Corporation and Optoma Technology are intended third party beneficiaries of this Agreement, and each such party shall cause its Affiliates to comply with and perform all duties and obligations of such party under this Agreement and

shall be responsible for the operations of its Affiliates hereunder as if such operations were carried out by such party.

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

Ogma, LLC

Optoma Corporation  
REDACTED

By: 

Name: Michael Connelly

Title: CEO



**EXHIBIT A**  
**LIST OF "LICENSED PATENTS"**

REDACTED

*M*  
*U*

**EXHIBIT B**

**MOTION FOR DISMISSAL WITH PREJUDICE**

The plaintiff, Ogma LLC, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), hereby moves for an order dismissing all claims in this action against defendant Optoma Corporation WITH PREJUDICE, subject to the terms of that certain agreement entitled "SETTLEMENT AGREEMENT" and dated \_\_\_\_\_, 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 Motion for Dismissal With Prejudice of all claims asserted by plaintiff Ogma LLC, against defendant Optoma Corporation 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 asserted in this suit by plaintiff Ogma LLC against defendant Optoma Corporation are hereby dismissed with prejudice, subject to the terms of that certain agreement entitled "SETTLEMENT AGREEMENT" and dated \_\_\_\_\_, 2011.

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

*NO*  
*any*

**EXHIBIT C**

**STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE**

The plaintiff, Ogma LLC, and the defendant, Optoma Technology, Inc., pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), hereby stipulate and move for an order dismissing all claims in this action WITH PREJUDICE, subject to the terms of that certain agreement entitled "SETTLEMENT AGREEMENT" and dated \_\_\_\_\_, 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 asserted by plaintiff Ogma LLC. against defendant Optoma Technology, Inc., 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 asserted in this suit by plaintiff Ogma LLC against defendant Optoma Technology, Inc., are hereby dismissed with prejudice, subject to the terms of that certain agreement entitled "SETTLEMENT AGREEMENT" and dated \_\_\_\_\_, 2011.

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

*MA*  
*Wes*

EXHIBIT D

**JOINT MOTION TO TERMINATE THE INVESTIGATION WITH RESPECT TO  
RESPONDENTS OPTOMA CORPORATION AND OPTOMA TECHNOLOGY, INC.**

Pursuant to Commission Rule 210.21(b), Complainant Ogma LLC ("Ogma") and Respondents Optoma Corporation and Optoma Technology, Inc. (collectively, the "Optoma Respondents") hereby move to terminate this investigation with respect to the Optoma Respondents, on the basis of the attached Settlement Agreement.

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

*M*  
*W*

**EXHIBIT E**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION  
TO TERMINATE THE INVESTIGATION WITH RESPECT TO RESPONDENTS  
OPTOMA CORPORATION AND OPTOMA TECHNOLOGY, INC.**

Pursuant to Commission Rule 210.21(b), Complainant Ogma LLC (“Ogma”) and Respondents Optoma Corporation and Optoma Technology, Inc. (collectively, the “Optoma Respondents”) have moved to terminate this investigation with respect to the Optoma Respondents, on the basis of the attached Settlement Agreement. 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 attached 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 Optoma Respondents be granted pursuant to 19 C.F.R. 210.21(b).



**EXHIBIT F**

**Bank Wiring Instructions**

REDACTED


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*Wing*

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IMAGE DISPLAY DEVICES AND  
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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 September 6, 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**

James C. Otteson, Esq.  
**AGILITY IP LAW, LLC**  
1900 University Circle, Suite 201  
East Palo Alto, CA 94303  
P: 650-227-4800

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT 3M COMPANY:**

Tom Schaumberg, Esq.  
**ADDUCI MASTRIANI &  
SCHAUMBERG LLP**  
1200 17<sup>th</sup> Street NW, 5<sup>th</sup> Floor  
Washington, DC 20036  
P: 202-467-6300

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

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337-TA-773

**ON BEHALF OF RESPONDENT ACTIVISION BLIZZARD, INC.:**

Michael A. Tomasulo, Esq.  
**DICKSTEIN SHAPIRO LLP**  
2049 Century Park East, Ste. 700  
Los Angeles, CA 90067  
P: 310-772-8317

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT BENSUSSEN DEUTSCH & ASSOCIATES, INC.:**

Kevin S. Costanza, Esq.  
**SEED IP LAW GROUP PLLC**  
701 Fifth Ave. Suite 5400  
Seattle, WA 92104  
P: 206-622-4900

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENTS CANON, INC. AND CANON USA, INC.:**

John J. Feldhaus, Esq.  
**FOLEY & LARDNER LLP**  
3000 K Street NW, Suite 600  
Washington, DC 20007-5143  
P: 202-672-5300

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENTS CASIO AMERICA INC. AND CASIO COMPUTER  
CO., LTD.**

Scott D. Stimpson, Esq.  
**SILLS CUMMIS & GROSS, P.C.**  
30 Rockerfeller Plaza  
New York, NY 10112  
P: 212-643-7000

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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**ON BEHALF OF RESPONDENT CHRISTIE DIGITAL SYSTEMS USA, INC.:**

Janine A. Carlan, Esq.  
**ARENT FOX LLP**  
1050 Connecticut Ave. NW  
Washington, DC 20036  
P: 202-857-6000

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT INTEC, INC.**

Joseph W. Berenato III, Esq.  
**BERENATO & WHITE, LLC**  
6550 Rock Springs Drive, Suite 240  
Bethesda, MD 20817  
P: 301-896-0600

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Jonathan Honig, Esq.  
**FEDER KASZOVITZ, LLP**  
845 Third Ave. 11<sup>th</sup> Floor  
New York, NY 10022  
P: 212-888-8200

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT KYOCERA COMMUNICATIONS, INC.:**

Blaney Harper, Esq.  
**JONES DAY**  
51 Louisiana Ave, NW  
Washington, DC 20001-2113  
P: 202-879-3939

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENTS LEGO A/S AND LEGO SYSTEMS, INC.:**

Elizabeth A. Alquist, Esq.  
**DAY PITNEY LLP**  
242 Trumbull Street  
Hartford, CT 06103-1212  
P: 860-275-0100

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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**ON BEHALF OF RESPONDENTS LENOVO (UNITED STATES), INC., LENOVO  
GROUP LTD., AND LENOVO (SINGAPORE) PTE. LTD.:**

T. Cy Walker, Esq.  
**KENYON & KENYON LLP**  
1500 K Street, N.W.  
Washington, DC 20005  
P: 202-220-4200

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENS MITSUBISHI ELECTRIC CORPORATION AND  
MITSUBISHI ELECTRIC & ELECTRONICS U.S.A., INC.:**

Terrence J. Truax, Esq.  
**JENNER & BLOCK LLP**  
353 N. Clark Street  
Chicago, IL 60654-3456  
P: 312-222-9350

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENTS NINTENDO CO., LTD. AND NINTENDO OF  
AMERICA INC.:**

Stephen Smith, Esq.  
**COOLEY LLP**  
One Freedom Square  
Reston Town Center  
11951 Freedom Drive  
Reston, Virginia 20190-5656  
P: 703-456-8000

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT NYKO TECHNOLOGIES, INC.:**

Stanley M. Gibson, Esq.  
**JEFFER, MANGELS BUTLER &  
MITCHELL, LLP**  
1900 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067-4308  
P. 310-203-8080

( ) Via Hand Delivery  
() Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

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337-TA-773

**ON BEHALF OF RESPONDENTS OPTOMA CORPORATION AND OPTOMA  
TECHNOLOGY, INC.**

Mary T. Huser, Esq.  
**BINGHAM MCCUTCHEM LLP**  
1900 University Ave.  
East Palo Alto, CA 94303-2223  
P: 650-849-4400

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT PERFORMANCE DESIGNED PRODUCTS LLC:**

Daniel N. Yannuzzi, Esq.  
**SHEPPARD MULLIN RICHTER  
& HAMPTON, LLP**  
12275 El Camino Real, Suite 200  
San Diego, CA 92130  
P: 858-720-8900

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**ON BEHALF OF RESPONDENT PLANAR SYSTEMS, INC.:**

James B. Coughlan, Esq.  
**PERKINS COIE LLP**  
700 Thirteenth St., NW, Ste. 600  
Washington, DC 20005  
P: 202-654-6200

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Paul T. Meiklejohn, Esq.  
**DORSEY & WHITNEY LLP**  
701 Fifth Ave., Suite 6100  
Seattle, WA 98104  
P: 206-903-8746

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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**337-TA-773**

**RESPONDENTS:**

Supersonic, Inc.  
6555 Bandini Boulevard  
Commerce, CA 90040

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**PUBLIC MAILING LIST**

Heather Hall  
**LEXIS - NEXIS**  
9443 Springboro Pike  
Miamisburg, OH 45342

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

Kenneth Clair  
**THOMSON WEST**  
1100 13th Street, NW, Suite 200  
Washington, DC 20005

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_