

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**Before the Honorable E. James Gildea  
Administrative Law Judge**

**In the Matter of**

**CERTAIN WIRELESS  
COMMUNICATIONS BASE STATIONS  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-871**

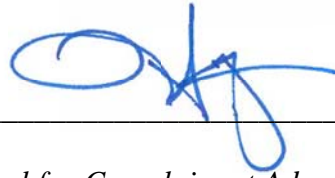
**COMPLAINANT ADAPTIX, INC.'S MOTION TO TERMINATE THE  
INVESTIGATION BASED ON WITHDRAWAL OF THE COMPLAINT, REQUEST  
FOR SUSPENSION OF THE PROCEDURAL SCHEDULE, AND REQUEST FOR  
SHORTENED RESPONSE TIME**

Under Commission Rule 210.21(a)(1) and Ground Rule 3, Complainant Adaptix, Inc. (“Adaptix” or “Complainant”) respectfully submits this motion to terminate the Investigation in its entirety based on withdrawal of the Complaint. There are no agreements, written or oral, express or implied between Adaptix and Respondents Telefonaktiebolaget LM Ericsson and Ericsson, Inc. (“Ericsson”) concerning the subject matter of the Investigation.

To conserve the resources of the Commission and the Parties in view of the evidentiary hearing on Wednesday, Adaptix also requests a suspension of the procedural schedule under Ground Rule 2 pending a ruling on this motion and a shortened response time.

Adaptix discussed this motion with counsel for Ericsson and Staff on Monday, December 2, and on the morning of Tuesday, December 3. Ericsson has not yet provided a position at the time of filing. The Staff does not oppose withdrawal of the complaint, supports suspension of the procedural schedule, and agrees to waive the two-day notice requirement under Ground Rule 3.2.

Respectfully submitted,



By: \_\_\_\_\_

*Counsel for Complainant Adaptix, Inc.*

Dated: December 3, 2013

Robert Greene Sterne  
Daniel E. Yonan  
H. Keeto Sabharwal  
Michael D. Specht  
Nicholas J. Nowak  
Robert W. Molitors  
Jonathan Tuminaro  
Richard P. Hadorn  
Dallin G. Glenn  
STERNE, KESSLER,  
GOLDSTEIN & FOX PLLC  
1100 New York Avenue NW  
Washington, DC 20005  
(202) 371-2600

Paul J. Hayes  
Samiyah Diaz  
Steven E. Lipman  
HAYES, MESSINA, GILMAN AND  
HAYES LLC  
300 Brickstone Square, 9th Floor  
Andover, MA 01810  
(978) 809-3850

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**Investigation No. 337-TA-871**

**COMPLAINANT ADAPTIX, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION  
TO TERMINATE THE INVESTIGATION BASED ON WITHDRAWAL OF THE  
COMPLAINT, REQUEST FOR SUSPENSION OF THE PROCEDURAL SCHEDULE,  
AND REQUEST FOR SHORTENED RESPONSE TIME**

Complainant Adaptix, Inc. (“Adaptix” or “Complainant”) respectfully submits this memorandum of points and authorities in support of its motion to terminate the Investigation in its entirety based on withdrawal of the Complaint, request for suspension of the procedural schedule, and request for shortened response time.

**I. Background**

Adaptix filed its Complaint on January 24, 2013, alleging that Telefonaktiebolaget LM Ericsson and Ericsson Inc. (collectively “Ericsson”) has imported certain wireless base stations and components thereof that infringe U.S. Patent No. 6,870,808, assigned to Adaptix, in violation of Section 337. The Commission instituted this Investigation by Notice published in the Federal Register on March 1, 2013. *See* 78 Fed. Reg. 13895-96 (Mar. 1, 2013). The hearing is scheduled for December 4-11, 2013. *See* Order No. 15 (Oct. 30, 2013).

## II. Relevant Law

Commission Rule 210.21(a)(1) permits a complainant to move to withdraw its complaint “at any time prior to the issuance of an initial determination on violation ... on the basis of withdrawal of the complaint.” 19 C.F.R. § 210.21(a)(1). “The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.” *Id.* Section 337 does not permit termination of an investigation “with prejudice” based upon withdrawal of a complaint. *Certain Bar Clamps, Bar Clamp Pads, And Related Packaging Display, and Other Materials*, Inv. No. 337-TA-429, Comm’n Op. at 7 (Feb. 13, 2001); *Certain Hand-held Meat Tenderizers*, Inv. No. 337-TA-647, Order No. 6 (Sep. 5, 2008) (same).

The Commission has stated that “in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the prehearing stage of an investigation.” *Certain Hand-Held Meat Tenderizers*, Inv. No. 337-TA-647, Order No. 6 at 2 (Sep. 5, 2008) (“*Meat Tenderizers*”), citing *Certain Ultrafiltration Membrane Systems, and Components Thereof, Including Ultrafiltration Membranes*, Inv. No. 337-TA-107, Commission Action and Order at 2 (March 11, 1982). A respondent’s objection has been found not to constitute an exceptional circumstance warranting denial of a motion for termination based upon withdrawal of the complaint. *Meat Tenderizers* at 2, citing *Certain Single In-Line Memory Modules and Products Containing Same*, Inv. No. 337-TA-336 (June 18, 1992) (unreviewed initial determination).

Under Ground Rule 2, modifications to the procedural schedule may be requested by any party through written motion showing good cause.

### **III. Argument**

Adaptix submits that there are no extraordinary circumstances in this Investigation that weigh against the Commission's practice of granting termination during the prehearing stage. Additionally, termination of the Investigation is in the interest of the Commission, the Parties, and the public because it will conserve public and private resources. *See Certain Mobile Electronic Devices Incorporating Haptics*, Inv. No. 337-TA-834, Order No. 35 (Mar. 27, 2013) ("granting the [motion to terminate] will result in the conservation of public and private resources") (unreviewed). Finally, Adaptix has made the required certification that there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of the Investigation.

The conservation of public and private resources provides good cause to suspend the procedural schedule pending resolution of the motion to terminate. *See Certain Devices for Mobile Data Communication*, Inv. No. 337-TA-809, Order No. 60 at 2 (terminating the investigation based on withdrawal of Complaint and suspending the procedural schedule) (unreviewed).

For the reasons stated, Adaptix's motion for termination of the Investigation based on withdrawal of the Complaint, request to suspend the procedural schedule, and request for shortened response time should be granted.

Respectfully submitted,

Dated: December 3, 2013

By:  \_\_\_\_\_

*Counsel for Complainant Adaptix, Inc.*

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H. Keeto Sabharwal  
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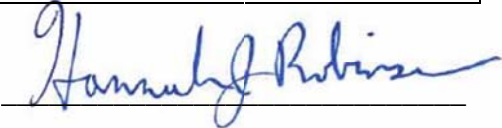
**Investigation No. 337-TA-871**

**CERTIFICATE OF SERVICE**

I, Hannah J. Robinson, hereby certify that on this day, December 3, 2013, true and correct copies of the foregoing **COMPLAINANT ADAPTIX, INC.'S MOTION TO TERMINATE THE INVESTIGATION BASED ON WITHDRAWAL OF THE COMPLAINT, REQUEST FOR SUSPENSION OF THE PROCEDURAL SCHEDULE, AND REQUEST FOR SHORTENED RESPONSE TIME** were filed and served upon the following as indicated:

<p><b>The Honorable Lisa R. Barton</b> Acting Secretary U.S. International Trade Commission 500 E Street, S.W., Room 112 Washington, D.C. 20436</p>	<p><input checked="" type="checkbox"/> Via Electronic filing (EDIS) <input checked="" type="checkbox"/> Via Hand Delivery (8 copies) <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Overnight Courier</p>
<p><b>Hon. E. James Gildea</b> Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W. Washington, D.C. 20436 Attorney Advisor: Sarah Zimmerman Email: Sarah.Zimmerman@usitc.gov</p>	<p><input checked="" type="checkbox"/> Via Hand Delivery (2 copies) <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Electronic Mail (attorney advisor only) <input type="checkbox"/> Via Overnight Courier</p>
<p><b>Monica Bhattacharyya, Esq.</b> Investigative Attorney Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401 Washington, D.C. 20436 Monica.Bhattacharyya@usitc.gov</p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Overnight Courier</p>
<p><b>Thomas L. Jarvis</b> <b>Paul C. Goulet</b> Winston &amp; Strawn LLP 1700 K Street, N.W. Washington, D.C. 20006 tjarvis@winston.com pgoulet@winston.com <i>Counsel for Respondents Ericsson Inc. and Telefonaktiebolaget LM Ericsson</i></p>	<p><input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Overnight Courier</p>

<p><b>Christine E. Lehman</b> Finnegan, Henderson, Farabow, Garrett &amp; Dunner, LLP 901 New York Avenue, N.W. Washington, D.C. 20001 Christine.Lehman@finnegan.com FH-871ITC-Courtesy-Ericsson@finnegan.com <i>Counsel for Respondents Ericsson Inc. and Telefonaktiebolaget LM Ericsson</i></p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Overnight Courier</p>
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**Hannah J. Robinson**  
**Litigation Paralegal**