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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 v.

22 D-LINK CORPORATION

23 and

24 D-LINK SYSTEMS, INC.,

25 Defendants.

No. 3:17-cv-00039-JD

26 **DEFENDANT D-LINK CORPORATION'S**  
27 **NOTICE OF MOTION**  
28 **AND MOTION TO DISMISS**  
**COMPLAINT; MEMORANDUM OF**  
**POINTS AND AUTHORITIES**

Date: Thursday May 11, 2017

Time: 10:00 a.m.

Courtroom: 11

Judge: Hon. James Donato

## TABLE OF CONTENTS

	Page
<b>TABLE OF AUTHORITIES.....</b>	<b>ii</b>
<b>NOTICE OF MOTION AND MOTION.....</b>	<b>1</b>
<b>ISSUE TO BE DECIDED.....</b>	<b>1</b>
<b>MEMORANDUM OF POINTS AND AUTHORITIES.....</b>	<b>1</b>
<b>I.    INTRODUCTION.....</b>	<b>1</b>
<b>II.   PROCEDURAL HISTORY.....</b>	<b>2</b>
<b>III.  FACTUAL BACKGROUND.....</b>	<b>2</b>
<b>A.  D-Link Corporation.....</b>	<b>2</b>
<b>B.  D-Link Systems, Inc.....</b>	<b>3</b>
<b>C.  D-Link Corp. Facilitates Communications and Bridges Language Barriers ..</b>	<b>5</b>
<b>D.  Lack of Jurisdictionally Sufficient Amount of Harm.....</b>	<b>5</b>
<b>IV.  ARGUMENT.....</b>	<b>6</b>
<b>A.  This Court Lacks General Jurisdiction Over D-Link Corp.....</b>	<b>7</b>
<b>B.  D-Link Systems is Not an Alter Ego of D-Link Corp.....</b>	<b>7</b>
<b>C.  This Court Lacks Specific Jurisdiction Over D-Link Corporation.....</b>	<b>9</b>
<b>1.  D- Link Corp. Lacks Any Jurisdictionally Meaningful Contacts.....</b>	<b>9</b>
<b>a.  Lack of Purposeful Direction.....</b>	<b>9</b>
<b>b.  Lack of Purposeful Availment.....</b>	<b>11</b>
<b>2.  Claims Do Not Relate to Putative Forum-Related Activities.....</b>	<b>13</b>
<b>3.  Exercise of Jurisdiction Would Be Unreasonable.....</b>	<b>14</b>
<b>V.   CONCLUSION.....</b>	<b>15</b>

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

<i>Action Embroidery Corp. v. Atl. Embroidery, Inc.</i> , 368 F.3d 1174 (9th Cir. 2004) .....	9
<i>AFL Telecomms. LLC v. Fiberoptic Hardware, LLC</i> , No. CV-11-1081-PHX-DGC, 2011 WL 4374262 (D. Ariz. Sep. 20, 2011) .....	10
<i>Amoco Egypt Oil Co. v. Leonis Nav. Co., Inc.</i> , 1 F.3d 848 (9th Cir. 1993) .....	15
<i>APL Co. Pte, Ltd. v. Intergro Inc.</i> , No. 14-cv-00488-JD, 2014 WL 4744410 (N.D. Cal. Sep. 22, 2014) .....	13
<i>Asahi Metal Industry Co., Ltd. v. Sup. Ct. of Cal., Solano Cnty.</i> , 480 U.S. 102 (1987) .....	7, 14
<i>Bancroft &amp; Masters, Inc. v. Augusta Nat’l Inc.</i> , 223 F.3d 1082 (9th Cir. 2000) .....	14
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985) .....	6, 14
<i>C.S. v. Corp. of the Catholic Bishop of Yakima</i> , No. 13-CV-3051-TOR, 2013 WL 5373144 (E.D. Wash. Sep. 25, 2013) .....	10, 11
<i>Calder v. Jones</i> , 465 U.S. 783 (1984) .....	9
<i>In re Capacitors Antitrust Litig.</i> , No. 14-cv-03264-JD, 2015 WL 3638551 (N.D. Cal. June 11, 2015) .....	9, 14
<i>Carmen v. Breville U.S.</i> , No. 1:15-CV-00117-EJL-CWD, 2017 WL 1197678 (D. Idaho Mar. 30, 2017) .....	14
<i>City of Monroe Emps.’ Ret. Sys. v. Bridgestone Corp.</i> , 399 F.3d 651 (6th Cir. 2005) .....	15
<i>CollegeSource, Inc. v. AcademyOne, Inc.</i> , 653 F.3d 1066 (9th Cir. 2011) .....	6
<i>Core-Vent Corp. v. Nobel Indus. AB</i> , 11 F.3d 1482 (9th Cir. 1993) .....	14

1	<i>Cybersell, Inc. v. Cybersell, Inc.</i> ,	
2	130 F.3d 414 (9th Cir. 1997) .....	13
3	<i>Daimler AG v. Bauman</i> ,	
4	134 S. Ct. 746 (2014) .....	7
5	<i>Doe v. Unocal Corp.</i> ,	
6	248 F.3d 915 (9th Cir. 2001) .....	6, 7, 13
7	<i>Erickson v. Neb. Mach. Co.</i> ,	
8	No. 15-cv-01147-JD, 2015 WL 4089849 (N.D. Cal. July 6, 2015) .....	10
9	<i>Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.</i> ,	
10	No. 2:16-CV-1236 JCM (NJ), 2016 WL 7018524 (D. Nev. Nov. 29, 2016) .....	11
11	<i>Fujitsu Ltd. v. Belkin Int'l, Inc.</i> ,	
12	782 F. Supp. 2d 868 (N.D. Cal. 2011) .....	3, 12, 14
13	<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> ,	
14	564 U.S. 915 (2011) .....	7
15	<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> ,	
16	466 U.S. 408 .....	6
17	<i>Holland Am. Line, Inc. v. Wartsila N. Am., Inc.</i> ,	
18	485 F.3d 450 (9th Cir. 2007) .....	12, 13
19	<i>International Shoe Co. v. Washington</i> ,	
20	326 U.S. 310 (1945) .....	6
21	<i>J. McIntyre Mach., Ltd. v. Nicastro</i> ,	
22	564 U.S. 873 (2011) .....	9, 12
23	<i>Los Gatos Mercantile, Inc. v. E.I. Dupont De Nemours &amp; Co.</i> ,	
24	No. 13-cv-01180-BLF, 2015 WL 4755335 (N.D. Cal. Aug. 11, 2015) .....	8
25	<i>Martin v. Mt. State Univ., Inc.</i> ,	
26	No. 5:12-03937, 2014 WL 1333251 (S.D. W. Va. Mar. 31, 2014) .....	11
27	<i>Martinez v. Aero Caribbean</i> ,	
28	764 F.3d 1062 (9th Cir. 2014) .....	7
	<i>Mehr v. Fédération Internationale De Football Ass'n</i> ,	
	115 F. Supp. 3d 1035 (N.D. Cal. 2015) .....	11
	<i>Mejia v. Bureau Veritas Cons. Prods. Serv. (India) Private Ltd.</i> ,	
	No. 1-15-CV-333 RP, 2015 WL 4601201 (W.D. Tex. July 29, 2015) .....	13
	<i>Mission Trading Co. v. Lewis</i> ,	
	No. 16-cv-01110-JST, 2016 WL 6679556 (N.D. Cal. Nov. 14, 2016) .....	10

1	<i>Omeluk v. Langsten Slip &amp; Batbyggeri A/S,</i>	
2	52 F.3d 267 (9th Cir. 1995) .....	12
3	<i>Picot v. Weston,</i>	
4	780 F.3d 1206 (9th Cir. 2015) .....	9
5	<i>Ranza v. Nike, Inc.,</i>	
6	793 F.3d 1059 (9th Cir. 2015) .....	6, 7, 8
7	<i>Rashidi v. Veritiss, LLC,</i>	
8	No. 2:16-cv-04761-CAS(JPRx), 2016 WL 5219448 (C.D. Cal. Sep. 19, 2016) .....	11
9	<i>Schwarzenegger v. Fred Martin Motor Co.,</i>	
10	374 F.3d 797 (9th Cir. 2004) .....	9, 10
11	<i>SEC v. Ross,</i>	
12	504 F.3d 1130 (9th Cir. 2007) .....	1
13	<i>Seiferth v. Helicopteros Atuneros, Inc.,</i>	
14	472 F.3d 266 (5th Cir. 2006) .....	9
15	<i>Steel v. United States,</i>	
16	813 F.2d 1545 (9th Cir. 1987) .....	12
17	<i>Stewart v. Screen Gems-Emi Music, Inc.,</i>	
18	81 F. Supp. 3d 938 (N.D. Cal. 2015) .....	8
19	<i>In re W. States Wholesale Nat. Gas Antitrust Litig.,</i>	
20	715 F.3d 716 (9th Cir. 2013) .....	9
21	<i>Walden v. Fiore,</i>	
22	134 S. Ct. 1115 (2014) .....	10
23	<i>Williams Bus. Servs. v. Waterside Chiropractic, Inc.,</i>	
24	No. C14-5873 BHS, 2016 WL 2610249 (W.D. Wash. May 6, 2016) .....	10
25	<i>Williams v. Yamaha Motor Co.,</i>	
26	No. 15-55924, 2017 WL 1101095 (9th Cir. Mar. 24, 2017) .....	7, 9
27	<i>World-Wide Volkswagen Corp. v. Woodson,</i>	
28	444 U.S. 286 (1980) .....	11
	<i>Yahoo! Inc. v. La Ligue Contre Le Racisme,</i>	
	433 F.3d 1199 (9th Cir. 2006) .....	11

### **Rules and Regulations**

Rule 12(b)(2) .....	1, 2, 6
Rule 12(b)(6) .....	2

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday May 11, 2017, at 10:00 a.m., or as soon thereafter as this may be heard, before the Honorable James Donato, District Judge, in the United States (“U.S.”) District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, defendant D-Link Corporation (“D-Link Corp.”), through its counsel, will, and hereby does, move this Court for an Order dismissing plaintiff Federal Trade Commission’s (“FTC”) Complaint, as to D-Link Corp., with prejudice pursuant to Rule 12(b)(2) for lack of personal jurisdiction.<sup>1</sup> This Motion is based upon this Notice of Motion and Motion; this Memorandum of Points and Authorities and supporting declarations and exhibits; all pleadings and papers filed in this action; oral argument of counsel; and any other matter properly considered.

**ISSUE TO BE DECIDED**

1. Should the claims against D-Link Corp. be dismissed with prejudice for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2)?

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Because D-Link Corp. has no relevant connection with the U.S. whatsoever except for being the parent corporation of D-Link Systems, Inc. (“D-Link Systems”), all claims against it should be dismissed for lack of personal jurisdiction. As this Court suggested, there is also no practical reason why D-Link Corp. should be a party in this case. For the sole purpose of accommodating FTC in this litigation, D-Link Corp. has designated its legal counsel, Patrick J. Massari, Esq., to accept service of and respond to third-party subpoenas issued by the FTC to D-Link Corp., which should dispel any belief by the FTC that D-Link Corp. must be a named defendant to allow the FTC to obtain discovery relevant to its allegations against D-Link Systems. In order to further facilitate judicial economy and save FTC from the authentication process, D-Link Systems has further offered to acknowledge that any documents, if properly discoverable and

<sup>1</sup> For avoidance of doubt, D-Link Corp. does not in any way consent to this Court’s jurisdiction in so moving through counsel. *See SEC v. Ross*, 504 F.3d 1130, 1149 (9th Cir. 2007).

1 produced by D-Link Corp., shall be deemed in the possession, custody, and control of D-Link  
 2 Systems. The FTC declined this offer. This Motion did not need to be filed and is only necessary  
 3 because the FTC apparently insists on pursuing D-Link Corp. in this Court, even though the FTC  
 4 has effectively admitted that adding D-Link Corp. as a party is unnecessary for the relief it seeks.

5 This Court lacks general jurisdiction because D-Link Corp.'s "home" is in Taiwan, not the  
 6 U.S.; it has no systematic or continuous ties to the U.S.; and, D-Link Systems is an independent  
 7 business entity, not D-Link Corp.'s alter ego. This Court also lacks specific jurisdiction because  
 8 D-Link Corp. did not purposefully direct any conduct to or purposefully avail itself of the benefits  
 9 of doing business in the U.S. In any event, exercise of jurisdiction here would be unreasonable.

## 10 **II. PROCEDURAL HISTORY**

11 At the March 9, 2017, hearing on D-Link Systems' Rule 12(b)(6) motion, counsel for D-  
 12 Link Systems, Patrick, J. Massari, Esq., with permission from D-Link Corp. informed the Court  
 13 that D-Link Corp. intended to move to dismiss all claims against it for lack of personal jurisdiction  
 14 pursuant to Rule 12(b)(2). Massari Decl. ¶ 2, Ex. A (Hearing Tr.), 26:15-18.

15 This Court inquired whether a Rule 12(b)(2) motion was necessary, suggesting that there  
 16 may be no reason for D-Link Corp. to be a party in this case. Hearing Tr. 26:19-22, 28:15-25. The  
 17 FTC indicated that D-Link Corp.'s participation is unnecessary for the remedy it is seeking, instead  
 18 expressing concern that if D-Link Corp. is not a party the FTC cannot obtain discovery it believes  
 19 necessary to establish D-Link Systems' liability. See Hearing Tr. 28:12-23. The Court noted:  
 20 "You don't need to be a party to get discovery. You can get discovery from third parties." Hearing  
 21 Tr. 28:24-25. The Court suggested a potential compromise whereby the FTC would receive  
 22 reasonable discovery from D-Link Corp. and D-Link Corp. would be dismissed from this case,  
 23 obviating the need for this Motion. See Hearing Tr. 27:17-28:2, 29:3-10. Undersigned counsel has  
 24 offered to accept service of and respond to subpoenas issued to D-Link Corp., if the FTC dismissed  
 25 D-Link Corp. with prejudice. The FTC declined this offer. See Massari Decl. ¶¶ 5-6, Exs. D-E.

## 26 **III. FACTUAL BACKGROUND**

### 27 **A. D-Link Corporation**

28 D-Link Corp. is a company organized under the laws of Taiwan, with its principal place of

business in Taipei City, Taiwan. Lin Decl. ¶ 3. D-Link Corp. sells products domestically in Taiwan. Lin Decl. ¶ 4. D-Link Corp. does not sell products in or to the U.S.; D-Link Corp. does not pay federal, state, or local taxes in the U.S.; has no registered agent to accept service of process in the U.S.; does not have any offices, warehouses, employees, bank accounts, leased premises, contracts, or customers in the U.S.; and does not own, rent, lease, or possess any real or personal property in the U.S. Lin Decl. ¶¶ 4-5, 16, 19. Nor does it hold a certificate or other license to do business in the U.S. Lin Decl. ¶ 17. D-Link Corp. does not sell in and has not sold (or offered for sale) any goods to the U.S. since May 2006.<sup>2</sup> Lin Decl. ¶ 13. D-Link Corp. has not shipped anything to D-Link Systems or anyone else in the U.S. since August 2008.<sup>3</sup> Lin Decl. ¶ 14.

D-Link Corp. does not sell products to D-Link Systems. Lin Decl. ¶ 15. D-Link Corp. does not manufacture the products that D-Link Systems sells in the U.S, including but not limited to D-Link Systems' IP cameras and routers. Lin Decl. ¶ 10. D-Link Corp. also does not develop or create the firmware updates for D-Link Systems' products. Lin Decl. ¶ 11. D-Link Corp. does not market products in or to the U.S. Lin Decl. ¶¶ 20-22. D-Link Corp. does not own, host, or manage the websites D-Link Systems uses to market D-Link Systems' products to U.S. consumers; D-Link Corp. does not develop or have control over the content of those websites. Lin Decl. ¶ 23. D-Link Corp. does not control decisions about which products D-Link Systems chooses to sell in the U.S. Lin Decl. ¶ 8. Nor does it control decisions about the features and security testing of those products. Lin Decl. ¶¶ 8, 29; Brown Decl. ¶¶ 24-25, 31-34.

#### **B. D-Link Systems, Inc.**

D-Link Systems is a subsidiary of D-Link Corp. *See* Compl. ¶¶ 7, 11. D-Link Systems is a corporation organized under the laws of the State of California, headquartered in Fountain Valley,

<sup>2</sup> In 2011, this District found specific jurisdiction over D-Link Corp. because an insufficient number of years had elapsed since D-Link Corp. severed certain connections to the U.S. *See Fujitsu Ltd. v. Belkin Int'l, Inc.*, 782 F. Supp. 2d 868, 883 (N.D. Cal. 2011) (applying 5-year lookback period and focusing on sales into U.S.). Here, this Complaint was filed in 2017—over six years after the *Fujitsu* complaint and almost *eleven* years after D-Link Corp. stopped selling products into the U.S. *See* Massari Decl. ¶ 4, Ex. C. The FTC's position is that "the time frame covered by the facts alleged in the complaint" starts in 2011. *See* Hearing Tr. 18:22-25.

<sup>3</sup> Between May 2006 and August 2008, D-Link Corp. shipped sixteen (16) items to D-Link Systems, none of which were IP cameras or routers or intended for resale; since then, D-Link Corp. has not shipped any products to the U.S. Lin Decl. ¶ 14.



1 California. Brown Decl. ¶ 3. Among other things, D-Link Systems sells a variety of differentiated  
2 router and IP camera products in the U.S. Brown Decl. ¶ 3.

3 D-Link Systems is its own separate, distinct, and independent business entity and makes its  
4 own business decisions. *See* Brown Decl. ¶¶ 4, 7-14, 31-35; Lin Decl. ¶ 6. D-Link Systems is not  
5 an agent of D-Link Corp. and vice versa. *See* Brown Decl. ¶¶ 7-14; Lin Decl. ¶ 5. D-Link Systems  
6 maintains management and accounting systems that are separate from those of D-Link Corp.;  
7 maintains its own records regarding payroll for its own employees and for other financial matters;  
8 files its own federal, state, and local taxes in the U.S.; executes leases for property under its own  
9 name and pays its own utility and other bills in its own name; and is responsible for its debts and  
10 accounts receivable. Brown Decl. ¶¶ 9-14. D-Link Systems has its own offices and separate team  
11 of employees that are different from those of D-Link Corp. Brown Decl. ¶ 13. D-Link Systems  
12 has its own management team to make independent corporate decisions, its own in-house legal  
13 counsel, and its own sales and marketing team to serve its customers in the U.S. Brown Decl. ¶ 8.

14 The products D-Link Systems sells use the D-Link brand name, and D-Link Corp. permits  
15 D-Link Systems to use its brand and trademark,<sup>4</sup> Lin Decl. ¶ 22, but D-Link Systems has authority  
16 to decide which products to sell in the U.S. and what features those products have, Brown Decl. ¶¶  
17 31-33; Lin Decl. ¶ 8. D-Link Systems also has authority over testing conducted on the products it  
18 sells. Brown Decl. ¶¶ 24-25, 34; Lin Decl. ¶ 9. D-Link Systems alone is ultimately responsible for  
19 addressing any possible vulnerabilities with its customers. Brown Decl. ¶ 25; Lin Decl. ¶ 12.

20 D-Link Corp. does not manufacture or create firmware updates for the products D-Link  
21 Systems sells. Lin Decl. ¶¶ 10-11; Brown Decl. ¶¶ 15-17. Nor does D-Link Systems purchase  
22 products from D-Link Corp. Lin ¶ 15. Instead, D-Link Systems' products are manufactured and  
23 shipped to D-Link Systems by third-party vendors located in China, Taiwan, and Hong Kong,  
24 which also provide product support, e.g., creating firmware updates. Brown Decl. ¶¶ 17, 26-27.  
25 These vendors-manufacturers ship such products directly to D-Link Systems. Brown Decl. ¶ 26.

26  
27 <sup>4</sup> For this reason, the phrase "D-Link Corp." appears on the copyright notice for certain  
28 advertisements and materials D-Link Systems creates and posts on the websites it owns and  
operates, *see* Lin Dec. ¶ 22, even though D-Link Corp. does not draft or exercise control over the  
development of such materials. *See* Brown Decl. ¶¶ 19-23; Lin Dec. ¶¶ 22-24.

1 D-Link Systems controls all marketing and advertising of its products in the U.S. Brown  
 2 Decl. ¶ 22. D-Link Systems drafts and creates advertisements, marketing materials, user guides,  
 3 and related materials for D-Link Systems products. Brown Decl. ¶¶ 22-23; Lin Decl. ¶¶ 22-24. D-  
 4 Link Systems, not D-Link Corp., owns, manages, and hosts the “dlink.com” domain name, as well  
 5 as the “us.dlink.com” domain name. Brown Decl. ¶ 20; Lin Decl. ¶ 23. D-Link Systems also  
 6 develops and controls the English-language content of the “mydlink.com” website and holds the  
 7 copyright for such content. Brown Decl. ¶ 20; Lin Decl. ¶ 23.

#### 8 **C. D-Link Corp. Facilitates Communications and Bridges Language Barriers**

9 The third-party vendors that manufacture and create updates for D-Link Systems’ routers  
 10 and IP cameras commonly conduct business (and develop software source code) in Chinese, while  
 11 D-Link Systems conducts business in English. Brown Decl. ¶ 28; Lin Decl. ¶¶ 25-28. Key D-Link  
 12 Systems personnel cannot speak, read, or write in Chinese. Brown Decl. ¶ 29. D-Link Corp. has  
 13 bilingual personnel fluent in both Chinese and English. Lin Decl. ¶ 26.

14 To bridge practical language and geographic barriers, D-Link Systems has, from time to  
 15 time, communicated with the vendors that manufacture and create firmware for the IP cameras and  
 16 routers D-Link Systems sells through D-Link Corp., which, at times, serves as a translator of  
 17 messages between the parties, to avoid any misunderstanding in communication with the vendors  
 18 and manufacturers. *See* Brown Decl. ¶¶ 28-30; Lin Decl. ¶¶ 25-28. Messages sent by D-Link  
 19 Systems in English are sometimes relayed to vendors through D-Link Corp. in Chinese and vice  
 20 versa. *See* Lin Decl. ¶ 27; Brown Decl. ¶ 30. Because it is more cost effective and efficient, D-  
 21 Link Systems may ask personnel at D-Link Corp. to report in English the results of certain test  
 22 reports that are in Chinese. *See* Brown Decl. ¶ 34. D-Link Systems has also, from time to time,  
 23 asked D-Link Corp. to retain the independent third party experts located in Taiwan to conduct tests  
 24 on its products in order to facilitate the communication in Chinese between the local experts and  
 25 manufacturers in Asia. *See* Brown Decl. ¶ 34; Lin Decl. ¶ 28. D-Link Corp. will assist with  
 26 language and related issues with this third party. *See* Brown Decl. ¶ 34; Lin Decl. ¶ 28.

#### 27 **D. Lack of Jurisdictionally Sufficient Amount of Harm**

28 The FTC began its investigation of D-Link Systems in or about *mid-2013*. *See* Brown

Decl. ¶ 35. According to the FTC, “the initial pre-complaint investigation went back as far as 2011[.]” Hearing Tr. 18:22-23. The FTC’s Complaint, filed **January 5, 2017**, does not allege actual harm to any identifiable person. See Compl. ¶¶ 16-18. The FTC’s Initial Disclosures, served **March 22, 2017**, do not identify a single “consumer” witness, instead referring generally to unspecified “[c]urrent and former customers[.]” See Massari Decl. ¶ 3, Ex. B (Initial Disclosures) at 2. It appears that *after almost four years of investigation, seeking records dating back to 2011, the FTC still has not identified a single “consumer” who has been harmed* in any way by practices alleged in the Complaint. See FTC Initial Disclosures at 2, 20-21; Brown Decl. ¶ 35.

#### IV. ARGUMENT

Under Rule 12(b)(2), a defendant may move to dismiss for lack of personal jurisdiction. “It is the plaintiff’s burden to establish the court’s personal jurisdiction over a defendant. The court may consider evidence presented in affidavits to assist it in its determination[.]” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (citations omitted). A plaintiff must make a prima facie showing of jurisdictional facts and “may not simply rest on the ‘bare allegations of [the] complaint.’” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Absent an evidentiary hearing, factual disputes are resolved in a plaintiff’s favor, but the Court “may not assume the truth of allegations in a pleading which are contradicted by affidavit[.]” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011) (citation omitted).

Determining whether the exercise of personal jurisdiction is consistent with due process involves a two-pronged test. First, the Court must find that a defendant has sufficient “minimum contacts” with the forum, and, second, the Court must then ensure that the exercise of jurisdiction over the defendant does not offend “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The “constitutional touchstone” for asserting personal jurisdiction over a non-resident is “whether the defendant purposefully established ‘minimum contacts’ in the forum State.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). The requisite minimum contacts can be established either through contacts sufficient to assert “specific” jurisdiction or “general” jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 & n.9 (1984). Neither are present here.

**A. This Court Lacks General Jurisdiction Over D-Link Corp.**

A court has general jurisdiction over a foreign corporation “only when the corporation’s affiliations with the State in which suit is brought are so constant and pervasive ‘as to render [it] essentially at home in the forum State.’” *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)); see *Williams v. Yamaha Motor Co.*, No. 15-55924, 2017 WL 1101095, at \*2 (9th Cir. Mar. 24, 2017); see also *Asahi Metal Industry Co., Ltd. v. Sup. Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 115 (1987) (“Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.” (citation omitted)). Here, D-Link Corp.’s “home” is Taiwan, not California. See Lin Decl. ¶¶ 2-3; Compl. ¶ 6. D-Link Corp. has no affiliation with California whatsoever. Nor has it maintained continuous or systematic contacts with any other states in the U.S. See Lin Decl. It is irrelevant that D-Link Systems, an independent subsidiary, is a California corporation, as the Supreme Court has made clear, see *Daimler*, 134 S. Ct. at 758-62 (rejecting “agency” theory of jurisdiction based on ties to in-state subsidiary); *Williams*, 2017 WL 1101095, at \*3 (discussing *Daimler*’s invalidation of agency theory); see also *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014). “[T]he location of the alleged harm” is also irrelevant. *Williams*, 2017 WL 1101095, at \*4 n.2. Therefore, this Court lacks general jurisdiction.

**B. D-Link Systems is Not an Alter Ego of D-Link Corp.**

Nor should D-Link Corp. be hauled into this Court on the theory that D-Link Systems is merely its alter ego. “The alter ego test is designed to determine whether the parent and subsidiary are ‘not really separate entities,’ such that one entity’s contacts with the forum state can be fairly attributed to the other. The ‘alter ego ... relationship is typified by parental control of the subsidiary’s internal affairs or daily operations.’” *Ranza*, 793 F.3d at 1071 (citation omitted). “To satisfy the alter ego test, a plaintiff ‘must make out a prima facie case “(1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.”’” *Id.* at 1073 (citations omitted); see *Unocal*, 248 F.3d at 926-28 (discussing requirements for alter ego theory).

To meet the “unity of interest and ownership” prong, a plaintiff must make a prima facie

1 ““showing that the parent controls the subsidiary to such a degree as to render the latter the mere  
 2 instrumentality of the former.”” *Ranza*, 793 F.3d at 1073 (citation omitted). In other words, a  
 3 plaintiff generally must allege that a foreign parent corporation exercises “pervasive control over  
 4 the subsidiary,” e.g., that the parent ““dictates every facet of the subsidiary’s business—from broad  
 5 policy decisions to routine matters of day-to-day operation.”” *Id.* (citation omitted). Even  
 6 allegations of “[t]otal ownership and shared management personnel are alone insufficient....” *Id.*

7 Factors that may guide the inquiry whether the unity-of-interest prong is met include: (1)  
 8 the commingling of funds and other assets of the entities; (2) the holding out by one entity that it is  
 9 liable for the debts of the other; (3) identical equitable ownership; (4) use of the same offices and  
 10 employees; (5) use of one as a mere shell or conduit for the affairs of the other; (6) inadequate  
 11 capitalization; (7) disregard of corporate formalities; (8) lack of segregation of corporate records;  
 12 and, (9) identical directors and officers. *See Stewart v. Screen Gems-Emi Music, Inc.*, 81 F. Supp.  
 13 3d 938, 954-56 (N.D. Cal. 2015); *see also Los Gatos Mercantile, Inc. v. E.I. Dupont De Nemours*  
 14 *& Co.*, No. 13-cv-01180-BLF, 2015 WL 4755335, at \*4–7 (N.D. Cal. Aug. 11, 2015).

15 Application of those factors shows why this test is not met here. D-Link Systems does not  
 16 comingle funds or assets with D-Link Corp. Brown Decl. ¶¶ 9-14. Neither D-Link Systems nor D-  
 17 Link Corp. holds itself out as responsible for the debts of the other. *See* Brown Decl. ¶ 14. Third,  
 18 D-Link Systems uses completely different offices and teams of employees than D-Link Corp. *See*  
 19 Brown Decl. ¶¶ 13; Lin Decl. ¶¶ 7, 18. D-Link Systems is an independent business entity making  
 20 its own decisions and thus is not a shell or conduit for the affairs of D-Link Corp. *See* Brown Decl.  
 21 ¶¶ 7-8, 18, 22-25, 31-33; Lin Decl. ¶¶ 6-12, 22-24, 29. D-Link Systems has substantial assets and  
 22 is not in any way inadequately capitalized. *Cf.* Brown Decl. ¶ 9-14. D-Link Systems and D-Link  
 23 Corp. observe corporate formalities. *See* Brown Decl. ¶¶ 9-14. D-Link Systems’ corporate records  
 24 are segregated from those of D-Link Corp. *See* Brown Decl. ¶¶ 9-10. And D-Link Systems’  
 25 directors and officers are almost entirely different from those of D-Link Corp., notwithstanding  
 26 minimal overlap in the past. *Cf.* Compl. ¶ 7. Indeed, the FTC failed even to plead facts sufficient  
 27 to meet this test. *Cf.* Compl. ¶¶ 6-11, 25. Any alter ego theory of jurisdiction therefore fails.

28 Although this Court need not reach the equities, *see, e.g., Ranza*, 793 F.3d at 1075 n.9, even

1 if, counterfactually, the unity-of-interest prong were satisfied, respecting the separateness of D-  
2 Link Corp. and D-Link Systems would not result in fraud or injustice. *See* Hearing Tr. 28:12-23.

### 3 **C. This Court Lacks Specific Jurisdiction Over D-Link Corporation.**

4 This Court also lacks specific jurisdiction over D-Link Corp. under any theory. *See also*  
5 *Williams*, 2017 WL 1101095, at \*4-6 (Supreme Court overruled Ninth Circuit formulation of  
6 agency test, insofar as otherwise relevant to specific jurisdiction). “Personal jurisdiction must exist  
7 for each claim asserted against a defendant.” *Action Embroidery Corp. v. Atl. Embroidery, Inc.*,  
8 368 F.3d 1174, 1180 (9th Cir. 2004); *Picot v. Weston*, 780 F.3d 1206, 1215 n.3 (9th Cir. 2015);  
9 *accord Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 274 (5th Cir. 2006) (specific  
10 jurisdiction is claim-specific inquiry). In this Circuit, a three-part test is used to determine on a  
11 claim-by-claim basis whether specific jurisdiction exists:

12 (1) The non-resident defendant must purposefully direct his activities or consummate  
13 some transaction with the forum or resident thereof; or perform some act by which he  
14 purposefully avails himself of the privilege of conducting activities in the forum,  
15 thereby invoking the benefits and protections of its laws; (2) the claim must be one  
which arises out of or relates to the defendant’s forum-related activities; and (3) the  
exercise of jurisdiction must comport with fair play and substantial justice, *i.e.* it must  
be reasonable.

16 *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 741-42 (9th Cir. 2013) (quoting  
17 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-02 (9th Cir. 2004)). If any one of  
18 the requirements is not met, due process is violated. *In re W. States*, 715 F.3d at 742; *see, e.g., J.*  
19 *McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011). None are met here.

### 20 **1. D-Link Corp. Lacks Any Jurisdictionally Meaningful Contacts.**

#### 21 **a. Lack of Purposeful Direction**

22 For claims sounding in tort, this Circuit typically uses a purposeful direction analysis, *see*  
23 *Picot*, 780 F.3d at 1212, evaluated “under the three-part ‘effects’ test traceable to *Calder v. Jones*,  
24 465 U.S. 783 (1984): the defendant must have ‘(1) committed an intentional act, (2) expressly  
25 aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the  
26 forum state.’” *In re Capacitors Antitrust Litig.*, No. 14-cv-03264-JD, 2015 WL 3638551, at \*2  
27 (N.D. Cal. June 11, 2015) (quoting *Schwarzenegger*, 374 F.3d at 803). “All three parts of the test  
28 must be satisfied.” *Schwarzenegger*, 374 F.3d at 805. None are met here.



1 First, with regard to the Complaint’s “deception” claims, D-Link Corp. did not commit any  
 2 intentional acts, since D-Link Systems is wholly responsible for the alleged advertising, marketing,  
 3 and other statements at issue. *See* Brown Decl. ¶¶ 19-23; Lin Decl. ¶¶ 20-24; *see also*  
 4 *Schwarzenegger*, 374 F.3d at 806 (requirements for intentional act). Thus, D-Link Corp. cannot be  
 5 said to have “expressly aimed” D-Link Systems’ independent advertisements anywhere. Specific  
 6 jurisdiction over D-Link Corp. cannot be predicated on D-Link Systems’ unilateral marketing  
 7 activities.<sup>5</sup> *See Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014). Therefore, there is no specific  
 8 jurisdiction for these claims.

9 Second, with regard to the Complaint’s “unfairness” claim, it appears to be based on  
 10 allegations sounding in negligence. *See* Compl. ¶¶ 15, 28. That alone is fatal. The allegedly  
 11 wrongful conduct, at best, amounts to mere untargeted negligence, which, by definition, cannot be  
 12 “expressly aimed” anywhere. Common sense dictates that “[p]urposeful direction cannot be found  
 13 where the defendant has engaged in ‘mere untargeted negligence’; instead, the defendant must be  
 14 found to have committed an intentional tortious act ‘expressly aimed’ at the forum.” *AFL*  
 15 *Telecomms. LLC v. Fiberoptic Hardware, LLC*, No. CV-11-1081-PHX-DGC, 2011 WL 4374262,  
 16 at \*4 (D. Ariz. Sep. 20, 2011) (citations omitted); *see also C.S. v. Corp. of the Catholic Bishop of*  
 17 *Yakima*, No. 13-CV-3051-TOR, 2013 WL 5373144, at \*4 (E.D. Wash. Sep. 25, 2013) (“In cases of  
 18 alleged *negligence* ... the express aiming requirement is more difficult to satisfy. ... Mere  
 19 foreseeability of injury in the forum state is insufficient to satisfy the express aiming requirement;  
 20 the plaintiff must demonstrate that the defendant made a conscious and deliberate effort to engage  
 21 a resident of the forum.” (citations omitted and emphasis in original)).

22 Even the Complaint does not allege this. Instead, the gravamen of the “unfairness” count is  
 23 an alleged “fail[ure] to take reasonable steps” to guard against allegedly “widely known and  
 24 reasonably foreseeable risks.” *See* Compl. ¶¶ 15, 28. An alleged failure to act is not an intentional

25  
 26 <sup>5</sup> D-Link Systems’ independent marketing activities are irrelevant to the question whether D-  
 27 Link Corp. *itself* engaged in *actions* creating sufficient contacts *with the U.S.* to support jurisdiction  
 28 here. *See also Erickson v. Neb. Mach. Co.*, No. 15-cv-01147-JD, 2015 WL 4089849, at \*3 (N.D.  
 Cal. July 6, 2015); *Williams Bus. Servs. v. Waterside Chiropractic, Inc.*, No. C14-5873 BHS, 2016  
 WL 2610249, at \*4 (W.D. Wash. May 6, 2016); *Mission Trading Co. v. Lewis*, No. 16-cv-01110-  
 JST, 2016 WL 6679556, at \*3 (N.D. Cal. Nov. 14, 2016).

1 tortious act and certainly cannot be “expressly aimed” anywhere. In any event, *D-Link Corp. does*  
 2 *not manufacture, ship, or create firmware updates for the routers and IP cameras D-Link*  
 3 *Systems chooses to sell in the U.S.* Brown Decl. ¶¶ 15-17, 26-27; Lin Decl. ¶¶ 10-15.

4 Moreover, specific personal jurisdiction requires that “a jurisdictionally sufficient amount  
 5 of harm is suffered in the forum state.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199,  
 6 1207 (9th Cir. 2006). But D-Link Corp. has done nothing to cause harm it knew would likely to be  
 7 suffered in the U.S. *Cf. Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.*, No. 2:16-CV-1236  
 8 JCM (NJK), 2016 WL 7018524, at \*3 (D. Nev. Nov. 29, 2016); *Rashidi v. Veritiss, LLC*, No. 2:16-  
 9 cv-04761-CAS(JPRx), 2016 WL 5219448, at \*5 (C.D. Cal. Sep. 19, 2016). Negligence claims  
 10 cannot be brought in the absence of damages or actual harm to identifiable victims. *See generally*  
 11 *Martin v. Mt. State Univ., Inc.*, No. 5:12-03937, 2014 WL 1333251, at \*6 (S.D. W. Va. Mar. 31,  
 12 2014) (“[T]he elements of negligence are duty, breach, causation, and damages. That is, there is no  
 13 tort of negligence without damages.”). Here, there is no allegation that D-Link Corp.’s alleged  
 14 conduct caused harm to any identifiable person. *See, e.g.*, Compl. ¶¶ 16-18. Indeed, after almost  
 15 four years of investigation, the FTC apparently cannot identify a single “consumer” it believes was  
 16 harmed. *See* FTC Initial Disclosures at 2; Brown Decl. ¶ 35. Thus, specific jurisdiction does not lie.

#### 17 **b. Lack of Purposeful Availment**

18 Nor does specific jurisdiction lie for the “unfairness” claim on a purposeful availment  
 19 theory, to the extent jurisdiction is evaluated using that rubric. *See Mehr v. Fédération*  
 20 *Internationale De Football Ass’n*, 115 F. Supp. 3d 1035, 1048-51 (N.D. Cal. 2015); *C.S.*, 2013 WL  
 21 5373144, at \*4 n.1. Due process principles require that the defendant’s conduct and connection  
 22 with the forum allow it to “reasonably anticipate being haled into court there.” *World-Wide*  
 23 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The purposeful availment requirement  
 24 assures that a nonresident will be aware that it is subject to suit in the forum state, and that it can  
 25 then take steps to limit the costs of litigation there *or can sever its connections with the forum*  
 26 *state*. *See id.* “The principal inquiry in cases of this sort is whether the defendant’s activities  
 27 manifest an intention to submit to the power of a sovereign. In other words, the defendant must  
 28 ‘purposefully avai[l] itself of the privilege of conducting activities within the forum State, thus



1 invoking the benefits and protections of its laws.”” *J. McIntyre*, 564 U.S. at 882 (plurality).

2 This test is not met here, particularly given the steps D-Link Corp. has purposefully taken  
3 since at least June, 2006, *to sever any connections, however tenuous, to the U.S.* Compare Lin  
4 Decl. ¶¶ 10-15, 32; Brown Decl. ¶¶ 15-17, *with Fujitsu*, 782 F. Supp. 2d at 884 (specific  
5 jurisdiction found *because*, unlike now, back in 2006 D-Link Corp. sold goods in the U.S.).

6 D-Link Corp. purposefully does not avail itself of the benefits of doing business in the U.S.  
7 *Cf. Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 272 (9th Cir. 1995). Nor is it in any  
8 way responsible for placing the products at issue here into the stream of commerce. *Cf. Holland*  
9 *Am. Line, Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459-60 (9th Cir. 2007); *J. McIntyre*, 564 U.S.  
10 at 881-85 (plurality). As explained above, D-Link Systems does not distribute products  
11 manufactured by D-Link Corp. See Lin Decl. ¶¶ 10-15. Instead, the products D-Link Systems  
12 sells in the U.S. (including routers and IP cameras) are from third-party vendors that manufacture  
13 and ship those products to D-Link Systems and then provide firmware updates.<sup>6</sup> See Brown Decl.  
14 ¶¶ 15-17, 26-27, 31-32; Lin Decl. ¶¶ 10-15. Even the third-party vendor-manufacturers that put D-  
15 Link Systems products in the stream of commerce should not be haled into this Court. See also *J.*  
16 *McIntyre*, 564 U.S. at 886-87 (plurality) (foreign manufacturer not subject to jurisdiction of forum  
17 state where distributor agreed to sell manufacturer’s machines in the U.S., and manufacturer had no  
18 presence in state, did not advertise or send any employees there). D-Link Corp. has done far less.

19 D-Link Corp. does not have an office, warehouse, bank account or any other presence in the  
20 U.S. Lin Decl. ¶¶ 2-24. D-Link Corp. does not manufacture goods that are sold in the U.S. Lin  
21 Decl. ¶ 10; Brown Decl. ¶¶ 16. Nor does it ship or sell goods into the U.S. Lin Decl. ¶¶ 13-15, 20;  
22 Brown Decl. ¶¶ 15, 17. And D-Link Corp. does not market anything in or toward the U.S. See Lin  
23

24 <sup>6</sup> D-Link Corp. has not sold goods into the U.S. now for about eleven years. *Cf. Fujitsu Ltd.*  
25 *v. Belkin Int’l, Inc.*, 782 F. Supp. 2d 868, 883 (N.D. Cal. 2011) (applying five-year lookback  
26 window to hold that specific jurisdiction existed *because* D-Link Corp. sold goods to D-Link  
27 Systems in California *within five years* of lawsuit, i.e., May 2006). “As a matter of due process,  
28 the determination of amenability to suit takes place at the time of the relevant contacts.” *Steel v.*  
*United States*, 813 F.2d 1545, 1549 (9th Cir. 1987). Here, *all* of the allegations occurred years  
*after* D-Link Corp. ceased shipping or selling goods into the U.S. *Fujitsu’s* reliance on D-Link  
Corp.’s alleged sale of products into the U.S. before May 2006 to find specific jurisdiction, see 782  
F. Supp. 2d at 883-84, confirms by contrast why specific jurisdiction is absent now.

Decl. ¶¶ 20-24; Brown Decl. ¶¶ 19-23. *Cf. Holland.*, 485 F.3d at 459-60 (mere website presence insufficient); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 420 (9th Cir. 1997).

D-Link Systems' use of the D-Link Corp. brand does not confer jurisdiction. The fact that D-Link Systems asks D-Link Corp. to assist, relay, and facilitate communication and/or translation of reports or messages cannot support jurisdiction. *Cf. APL Co. Pte, Ltd. v. Intergro Inc.*, No. 14-cv-00488-JD, 2014 WL 4744410, at \*3-4 (N.D. Cal. Sep. 22, 2014) (use of telephone and other methods of international communication generally insufficient). Nor can D-Link Systems' decision **to use a third party located in Taiwan** working with D-Link Corp. to test its products. *Cf. Mejia v. Bureau Veritas Cons. Prods. Serv. (India) Private Ltd.*, No. 1-15-CV-333 RP, 2015 WL 4601201, at \*5 (W.D. Tex. July 29, 2015) (suggesting overseas product testing insufficient).

## 2. Claims Do Not Relate to Putative Forum-Related Activities.

"To determine whether a claim arises out of forum-related activities, courts apply a 'but for' test." *Unocal Corp.*, 248 F.3d at 924 (citation omitted). That test is not met here, as the FTC's claims (defective as they are) would have arisen regardless of D-Link Corp.'s alleged contacts with the U.S. Here, as explained above, D-Link Corp. has nothing whatsoever to do with the alleged representations underlying the FTC's "deception" claims. *See* Brown Decl. ¶ 19; Lin Decl. ¶¶ 20-24. Nor does D-Link Corp. even own or exert control over the domain names of the websites that D-Link Systems uses to market its products in the U.S. *See* Brown Decl. ¶¶ 20; Lin Decl. ¶ 23. Therefore, this Court lacks personal jurisdiction over D-Link Corp. with respect to all such claims.

The "unfairness" claim, too, centers on matters D-Link Systems is responsible for and actions D-Link Systems (and/or D-Link Systems' third-party vendors, which manufacture its products overseas) allegedly failed to take. *Compare* Brown Decl. ¶¶ 16, 24-27, 31-33; Lin Decl. ¶¶ 8-12, 29-30, *with* Compl. ¶¶ 15, 28. The mere fact that D-Link Corp. assists in communication, translates, and relays messages, at D-Link Systems' request, and works, per D-Link Systems' request, with a third-party testing company from time to time on the product testing issues does not somehow render D-Link Corp.'s parent-subsidiary connection with D-Link Systems a but-for cause of this claim. *Cf. Mejia*, 2015 WL 4601201, at \*5 (suggesting overseas testing insufficient).

### 3. Exercise of Jurisdiction Would Be Unreasonable

“[M]inimum requirements inherent in the concept of ‘fair play and substantial justice’ may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities.” *Burger King*, 471 U.S. at 477-78 (citation omitted). To determine whether a defendant has made a compelling case that jurisdiction is unreasonable, this Court considers seven factors:

“(1) the extent of the defendant’s purposeful interjection into the forum state, (2) the burden on the defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant’s state, (4) the forum state’s interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief, and (7) the existence of an alternative forum.”

*In re Capacitors Antitrust Litig.*, 2015 WL 3638551, at \*3 (quoting *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000)). Application of these factors confirms that exercising jurisdiction here would be patently unreasonable. *Cf. Carmen v. Breville U.S.*, No. 1:15-CV-00117-EJL-CWD, 2017 WL 1197678, at \*6 (D. Idaho Mar. 30, 2017).

First, D-Link has not purposefully interjected itself into this forum, instead doing the exact opposite and purposefully withdrawing from the U.S. *Compare Fujitsu*, 782 F. Supp. 2d at 884, with Lin Decl. ¶¶ 3-21, 32. D-Link Corp. has not had significant connections with the U.S. since 2006, intentionally severing all such contacts no later than 2008. *See* Lin Decl. ¶¶ 13-21, 32. This weighs against exercising jurisdiction. *See Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488-90 (9th Cir. 1993) (degree of purposeful interjection relevant to reasonableness).

Second, this District has already recognized that the burden on D-Link Corp. in defending a case here militates against exercising jurisdiction: “[T]he Court understands that D-Link Corp. will be burdened by litigating this case in California[.]”<sup>7</sup> *Fujitsu*, 782 F. Supp. 2d at 885; *see also* Lin Decl. ¶¶ 31-32. “The unique burdens placed upon one who must defend in a foreign system should have significant weight in assessing the reasonableness of stretching the long arms of personal jurisdiction over national borders.” *Asahi*, 480 U.S. at 114. So too here.

Third, allowing a U.S. regulatory agency to drag a Taiwanese company that only conducts

<sup>7</sup> The *Fujitsu* court found that exercising jurisdiction in that patent litigation would be reasonable based on the other factors, also finding that “D-Link Corp. has conceded that it sold allegedly infringing products into California prior to May 2006.” *See* 782 F. Supp. 2d at 885.

1 sales activities in Taiwan into a U.S. Court for alleged failures to act would conflict with Taiwan's  
 2 sovereignty. "Where, as here, the defendant is from a foreign nation rather than another state, the  
 3 sovereignty barrier is high and undermines the reasonableness of personal jurisdiction." *Amoco*  
 4 *Egypt Oil Co. v. Leonis Nav. Co., Inc.*, 1 F.3d 848, 852 (9th Cir. 1993).

5 Fourth, the U.S. has no interest whatsoever in the FTC dictating to a Taiwanese company  
 6 how it is supposed to do business in Taiwan, particularly where, as here, it has no business  
 7 connections to the U.S. and there is no allegation of actual harm to anyone. As the FTC appears to  
 8 recognize, *see* Hearing Tr. 28:19-23, it can obtain relief necessary to protect U.S. consumers  
 9 against D-Link Systems alone, to the extent its claims are meritorious (they are not). *See also City*  
 10 *of Monroe Emps. ' Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 666 (6th Cir. 2005) (foreign  
 11 defendant adding "little or nothing" to plaintiff's claims weighs against jurisdiction).

12 Fifth, dragging D-Link Corp. into this lawsuit will waste this Court's time and D-Link  
 13 Corp.'s resources. It is in the interest of judicial efficiency for this Court to decline to exercise  
 14 jurisdiction over D-Link Corp., rather than allowing the FTC to pursue years of costly  
 15 multinational discovery, which may burden this Court with discovery disputes. As this Court  
 16 suggested, there is no practical reason for D-Link Corp. to be in this case. Hearing Tr. 26:19-22,  
 17 28:15-25. Counsel for D-Link Corp. even offered to receive and respond to subpoenas issued by  
 18 the FTC to D-Link Corp., if the FTC agreed to dismiss D-Link Corp. with prejudice.

19 The final factors are, at best, neutral, since D-Link Corp. has nothing to do with this case.

## 20 **V. CONCLUSION**

21 For these reasons, all claims against D-Link Corp. should be dismissed with prejudice.

23 DATED: April 3, 2017

Respectfully submitted,  
 CAUSE OF ACTION INSTITUTE

24 By: /s/ Patrick J. Massari  
 25 PATRICK J. MASSARI [admitted *pro hac vice*]

26 *Attorneys for Defendants D-Link Corporation*  
 27 *and D-Link Systems, Inc.*  
 28 *(Additional counsel listed on caption page)*

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15 UNITED STATES DISTRICT COURT  
16  
17 NORTHERN DISTRICT OF CALIFORNIA  
18  
19 SAN FRANCISCO DIVISION

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 vs.

23 D-LINK CORPORATION

24 and

25 D-LINK SYSTEMS, INC.,

26 Defendants.  
27  
28

No. 3:17-cv-00039-JD

**DECLARATION OF PATRICK J.  
MASSARI IN SUPPORT OF  
DEFENDANT D-LINK CORPORATION'S  
MOTION TO DISMISS**



**DECLARATION OF PATRICK J. MASSARI**

The undersigned declarant, Patrick J. Massari, states:

1. I am an attorney at Cause of Action Institute, lead counsel for defendant D-Link Systems, Inc. ("D-Link Systems"), also appearing on behalf of D-Link Corporation ("D-Link Corp.") for purposes of contesting this Court's personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). The following facts are based on my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
2. Attached hereto as Exhibit A is a true and correct copy of the transcript of a hearing this Court held in the above-captioned action on March 9, 2017, on Defendant D-Link Systems' Motion to Dismiss Complaint, ECF No. 42. I have reviewed this transcript. To the best of my knowledge, it does not contain the following personal identifiers, which I understand must be redacted: (a) Social Security numbers; (b) financial account numbers; (c) names of minor children; (d) dates of birth; and, (e) home addresses of individuals.
3. Attached hereto as Exhibit B is a true and correct copy of Plaintiff Federal Trade Commission's Initial Disclosures, which were served on counsel for D-Link Systems via email on March 22, 2017.
4. Attached hereto as Exhibit C is a true and correct copy of a Complaint filed on September 3, 2010, in the U.S. District Court for the Northern District of California in a matter captioned *Fujitsu Limited v. Belkin International, Inc. et al.*, No. 5:10-cv-03972-LHK, which I understand was downloaded using the electronic public access service PACER.
5. Attached hereto as Exhibit D is a true and correct copy of an email (Subject: "RE: Draft proposed stipulation to dismiss D-Link Corporation from this action") I sent to counsel for Plaintiff Federal Trade Commission ("FTC") on March 29, 2017. The FTC declined to accept this proposed stipulation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Robert J. Z

PATRICK J. MASSARI

# EXHIBIT A



Pages 1 - 30

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. C 17-00039 JD
	)	
D-LINK CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

San Francisco, California  
Thursday, March 9, 2017

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

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Also present: William Brown - D-Link Systems

Reported By: Rhonda L. Aquilina, CSR #9956, RMR, CRR  
Official Court Reporter

Thursday - March 9, 2017

11:30 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling civil 17-39, Federal Trade Commission versus D-Link Corporation. Counsel.

**MR. MORIARTY:** Good morning, Your Honor. My name is Kevin Moriarty. I represent the Federal Trade Commission.

**MS. HURTADO:** Good morning, Your Honor. Laura Hurtado on behalf of D-Link System. I'm serving as local counsel. And I'm joined by lead counsel Patrick Massari and Michael Pepson. They've both been admitted pro hac vice. And I'm also joined by our client representative Mr. William Brown, the Chief Security Officer for D-Link Systems.

Mr. Pepson will be arguing on behalf of D-Link Systems, and this is his first argument in federal court.

**THE COURT:** Okay. Good morning.

**MR. PEPSON:** Thank you, Your Honor. Good morning.

**MR. MORIARTY:** Your Honor, there's one more here.

**MS. BERGER:** Oh, sorry. Pardon me. Laura Berger. I'm co-counsel for the Federal Trade Commission.

**THE COURT:** All right. Okay. Come on up.

**MR. PEPSON:** Good morning, Your Honor.

May it please the Court, Michael Pepson on behalf of D-Link Systems, Inc.

1       On a motion to dismiss the Federal Trade's Commission  
2       six-count complaint for failure to state a claim upon which  
3       relief can be granted under Rule 12(b)(6) and 9(b), because  
4       they failed to plead facts sufficient to plausibly show  
5       entitlement to relief under the standard for Rule 8 pleadings  
6       set by the Supreme Court in *Iqbal* and *Atlantic -v- Twombly*  
7       where --

8               **THE COURT:** You know what we call that? Football.

9               **MR. PEPSON:** I learn something every day, Your Honor.  
10       Thank you.

11       And, for example, they have failed to meet their burden of  
12       plausibly pleading facts sufficient to show that my client's  
13       practice is currently caused or likely to have caused  
14       substantial consumer injury because the complaint is based on  
15       speculative and conclusory allegations and unspecified press  
16       reports, which should not be considered for the truth of the  
17       matter asserted, and nor should such --

18               **THE COURT:** Let me just jump in. Now, this looked to  
19       me like a fairly typical FTC complaint, okay. They're charged  
20       with monitoring deceptive or unfair trade practices; right?

21               **MR. PEPSON:** Yes, Your Honor.

22               **THE COURT:** Okay. So the complaint says D-Link  
23       represents to people who are consumers that their security is  
24       topnotch, and you're safe with D-Link. And the FTC is saying  
25       that's not true. D-Link is actually very porous when it comes

1 to security, and the representations they're making are  
2 deceptive because they're inaccurate, and they harm consumers  
3 because the consumers end up buying D-Link products, spending  
4 their money on D-Link products, and don't get the benefit of  
5 their expectations, and they may be vulnerable to having their  
6 personal data, financial data, and medical data, private data  
7 stolen.

8 So I have to say it didn't strike me as particularly thin.  
9 It struck me as sort of a classic deceptive conduct case.

10 Now, why is that wrong?

11 **MR. PEPSON:** Well, with regard to the deception  
12 claims, Your Honor, to begin, and, for example, take count two,  
13 their Exhibit PX1 is from the Internet way back, and even  
14 according to their allegation it's no longer out there.

15 If the Court were to look at *FTC -v- Evans Products* in our  
16 reply papers, I believe it's on page 2 which speaks about  
17 13M's -- permanent injunctive relief under 13(b), and cases  
18 citing *Evans* -- or *FTC -v- Evans* or *FTC -v- Evans Products*, the  
19 rule appears to be that past representations cannot be the  
20 basis for deception absent a showing of likely reoccurrence.

21 In addition, Your Honor, we would respectfully submit --

22 **THE COURT:** Let me just jump in on that. I did not  
23 read the complaint to be a historical document. I read it to  
24 be this is what D-Link has done in the past, and they are  
25 continuing to do it. And the opposition from the Government

1 says yes, that is the correct reading.

2 So of course, you know, some of the brochures were frozen  
3 in time, that's the nature of an exhibit. You normally get it  
4 the moment you get it. But my -- I think a fair reading of the  
5 complaint is D-Link has had this practice of making assurances,  
6 and it's bound back in time, but the kicker is *and it's still*  
7 *happening today*. And I don't see the complaint saying no,  
8 we're not saying that, we're only looking at things that stop,  
9 you know, a year ago. I don't see that. How do you get to  
10 that point?

11 **MR. PEPSON:** Well, Your Honor, to begin, and I think  
12 it's telling, the very first sentence in paragraph 17 of the  
13 complaint states I believe the risk of harm to consumers was  
14 significant, past tense.

15 In addition, the other -- the guts of their unfairness  
16 complaint, and as well as their deception claims, are in  
17 paragraphs 15 through 18, Your Honor. And those paragraphs,  
18 when you strip out the reference to press reports, which we  
19 would submit to Your Honor under -- for the reasons set forth  
20 in the *Walker -v- Swift* case out of the Eastern District of  
21 Virginia, we cite in our reply papers, should not be  
22 considered. And when you strip out the legal conclusions,  
23 you're left with words like this "could have happened, was."  
24 "Was" does not mean "is," Your Honor, we would submit, and  
25 "could" does not mean "did."

1 And in addition, we would submit, as to the unfairness,  
2 which there are additional elements that must be pled which are  
3 different from the deception claim, we -- no court has found  
4 liability absent allegations that are of actual harm.

5 And by contrast, Your Honor, we would submit that --

6 **THE COURT:** Well, let me just jump in. Remember the  
7 FTC statute says "likely to cause harm." You don't actually  
8 have to say -- you don't have to wait for the house to burn  
9 down before the FTC can run in and say the fire alarms don't  
10 work. You could have the FTC say, you know, there's a lot of  
11 data suggesting that fire alarms don't work, and we want to  
12 intervene now before the house burns down. There's nothing  
13 wrong with that.

14 **MR. PEPSON:** Well, Your Honor, if I may briefly  
15 respond. That is the plain language of the statute "is likely  
16 to cause harm." That is forward looking.

17 And in addition, that -- the Consent Order from 1973 they  
18 point to in the *Philip Morris* case, which is also in a footnote  
19 in their unfairness statement, it involves the sort of thing  
20 which also involves reckless, in my view, conduct: Mailing  
21 razor blades, without telling anyone, unsolicited to houses,  
22 you know, with young children and pets, and that's the sort of  
23 "is likely."

24 **THE COURT:** Pets?

25 **MR. PEPSON:** Actually, I was reading the --

**THE COURT:** They mailed something to a pet?

MR. PEPSON: Or to homes which have -- may have young children and pets.

**THE COURT:** You mean I should check my dog's mail?

**MR. PEPSON:** Well, hopefully this stuff is no longer going on.

**THE COURT:** The FTC intervened, that's why my dog is not getting any mail; right?

(Laughter) .

**THE COURT:** You agree that's a good thing?

Let me ask you this. You know, you understand the only exercise at this point, the only exercise is whether they have stated a plausible claim under the FTC Act, okay, that's it. This is 12(b)(6). That's all we're talking about here.

**MR. PEPSON:** Yes, Your Honor.

**THE COURT:** And you may kill them down the road, but what I'm seeing -- the Government should come up, please -- what I'm seeing is enough.

Now, let me just ask a couple questions of the Government.

Is this a purely retrospective complaint?

**MR. MORIARTY:** Thank you, Your Honor.

No, it isn't. A couple of things that they pointed to and made the sort of grammar argument that they are all in the past, I'd say the commonsense reading of those things like that D-Link has failed or defendants have failed, the commonsense

1 reading of that is that that failure comes up to the present  
2 time. And I would also --

3 **THE COURT:** Just let me ask you this. You all wrote  
4 the complaint. Are you suing on current practices?

5 **MR. MORIARTY:** Yes, Your Honor.

6 **THE COURT:** Okay. All right. So I think that takes  
7 care of that issue.

8 Now, on the harm issue, you know, typically you do need  
9 something -- you know, the FTC is not the classic or typical  
10 civil plaintiff. You can't say *I was an injured*, that's not  
11 the FTC's role, okay. But, I mean, aren't there any studies or  
12 something else that's a little bit more than a press report on  
13 D-Link's, you know, alleged security issues?

14 **MR. MORIARTY:** Well, Your Honor, you know, I think  
15 we've satisfied the standard here, which is that we need to  
16 plead sufficient factual content to raise a reasonable  
17 inference that there's a plausible claim for relief, and that's  
18 exactly what we've done in paragraph 16 through 18. We've  
19 identified a variety of ways which the vulnerable devices could  
20 be identified, and the variety of ways that consumers could be  
21 harmed.

22 **THE COURT:** Where is that information coming from?

23 **MR. MORIARTY:** It's coming independently from our own  
24 investigation prior to the complaint, and our consultation with  
25 experts, and as well as our review of public information. And



1 there was a pre-complaint investigation in this case as well.

2 **THE COURT:** All right. So you're not relying only on  
3 press reports.

4 **MR. MORIARTY:** That's correct, Your Honor.

5 **THE COURT:** All right. So just tell me -- put a  
6 little more -- what specifically are you relying that's not a  
7 press report?

8 **MR. MORIARTY:** Well, Your Honor, the -- there's a  
9 variety of web sites that identify exploitations based on  
10 basically like (chk)white hat hackers or (chk)gray hat hackers  
11 identifying vulnerabilities in devices, so we rely in part on  
12 that.

13 **THE COURT:** Why isn't that in there, though? I  
14 mean --

15 **MR. MORIARTY:** Your Honor, I think we've identified  
16 sufficient factual content in this case, and so, you know, we  
17 thought that -- or, you know, we allege that -- we argue that  
18 this is sufficient factual information to put them on notice of  
19 the types of harms that we intend to develop evidence  
20 regarding.

21 So I think that it's, you know, sort of in the range of  
22 *Twiqbal*, which is a new word for me, too. There is, you know,  
23 the threshold that you have to surmount, and I'd say we've  
24 easily surmounted that. Is there a possibility that you could  
25 provide greater detail in this complaint? I think the answer

1 is yes, there's always the possibility of greater detail.

2 **THE COURT:** Well, I mean, I didn't see anything more  
3 in here than press reports, which is not the best foundation.  
4 I mean, is there anything in here other than press reports?

5 **MR. MORIARTY:** Your Honor, we -- like I said, we  
6 relied on a variety of things, and we intend to --

7 **THE COURT:** Just show me a couple.

8 **MR. MORIARTY:** Oh, well, it's, you know, it's -- the  
9 press reports are not -- I'd say -- let me put it this way, the  
10 press report sentence in the complaint is a little bit of a red  
11 herring to the extent that it suggests that that's the  
12 exclusive source of our information in these cases. In fact,  
13 the allegations in paragraphs 17 and 18 identify the variety of  
14 ways that consumers could be injured by the failures, the data  
15 security failures of the defendants.

16 **THE COURT:** And it's based on this other stuff you did  
17 outside of press reports?

18 **MR. MORIARTY:** Exactly, Your Honor, yes.

19 **THE COURT:** Is that right?

20 **MR. MORIARTY:** Yes. Yes.

21 **THE COURT:** All right. Let me also -- so Mr. Pepson,  
22 I mean, *LabMD* just doesn't look like it's on point for me.  
23 Now, the reason for that is D-Link is selling a consumer good  
24 directly to members of the public, okay. This is not an issue  
25 of, you know, whether their firewalls were good, whether

1 somebody, you know, got into their system and took consumer  
2 data, it's not that. This is an old-fashioned FTC, you're  
3 selling a bogus good, or you're making representations about  
4 this good that aren't true. I don't see that as being even  
5 close to *LabMD*.

6 Now, what do you think about that?

7 **MR. PEPSON:** Well, Your Honor, I think that the  
8 similarity would go to the absence of any allegation of actual  
9 harm to identifiable people in the form of monetary or health  
10 and safety. Or, for example, the FTC's quintessential  
11 unfairness case the *International Harvester* decision involved a  
12 tractor or fuel geyser where people were seriously burned or,  
13 you know, at least one person died. Or take the (*chk*) *Wyndham*  
14 case, for example, in the district court where Judge Salas of  
15 the Northern -- or of the District Court for New Jersey noted  
16 her finding as to the elements of unfairness being met was very  
17 fact-specific and limited to that decision.

18 But, in addition --

19 **THE COURT:** Well, let me just jump in. The Third  
20 Circuit didn't do that. The Third Circuit just said *Wyndham*,  
21 you told people that your data was safe, and it turns out your  
22 data wasn't safe. They didn't say *and Bob in room 28 lost his*  
23 *credit card as a result of that*. They didn't do that.

24 **MR. PEPSON:** Your Honor, if I might briefly respond.

25 Footnote one of that decision makes very clear that on

1 interlocutory review one issue they were not considering was  
2 the sufficiency of pleading the elements of unfairness. And in  
3 that case there were three breaches in a one-year period, over  
4 600,000 consumers, \$10 million in damages. The complaint  
5 itself is very detailed. It doesn't have "could, would," and  
6 it does not involve or rely on press reports.

7 And if I might, for the *LabMD* decisions as well, it's our  
8 view as a persuasive, not as binding, but as just a persuasive  
9 setting forth of the elements of unfairness, particularly as to  
10 consumer injury, the FTC chief administrative law judge did a  
11 fantastic job of laying out the history and their precedent,  
12 and just making very clear that they have not come into a  
13 federal court, or even in-house for that matter where, again,  
14 the *Philip Morris* was a consent order. There was no  
15 adjudication -- determination of liability. And it was also,  
16 you know, a physical --

17 **THE COURT:** I think maybe, you know, the harm is a  
18 consumer bought a good that was misrepresented. You don't have  
19 to bring more than that. You don't have to show that your  
20 medical records were consequently lost. This is not what the  
21 case is about. The case is about deceptive and unfair  
22 marketing of these products; isn't that right?

23 **MR. MORIARTY:** Well, Your Honor, there are two types  
24 of counts. And the first count on unfairness is actually not  
25 tethered to a representation, and I think that's what they're

1 getting at.

2 **THE COURT:** But isn't it -- I mean, it's unfair in  
3 that they were selling a good that did not live up to the  
4 promises that were made.

5 **MR. MORIARTY:** Actually, it's unfair because they --  
6 the product that they sold was likely -- would cause or is  
7 likely to cause substantial injury that's not outweighed by the  
8 countervailing benefits. It doesn't actually -- it's not tied  
9 to representation.

10 **THE COURT:** What about the allegations of unfairness  
11 and deceptive conduct overlap.

12 **MR. MORIARTY:** Well, I mean, this gets to an  
13 interesting issue, which is that do you need a deception for  
14 conduct to be unfair?

15 **THE COURT:** I'm not saying that. But the core facts  
16 overlap.

17 **MR. MORIARTY:** The core facts overlap, absolutely.

18 **THE COURT:** Okay. I mean, just buying the product is  
19 harm, if it doesn't perform as represented or if it exposes  
20 someone to unreasonable danger. I mean, you don't need  
21 anything -- there's no plus factor you need beyond that.  
22 That's why this is different from *LabMD*, okay. That did not  
23 involve the sale of consumer goods.

24 **MR. PEPSON:** Your Honor, if I might very briefly.

25 **THE COURT:** Yes.

1           **MR. PEPSON:** I would submit to the Court that there is  
2 a distinction between, you know, Count One and Counts  
3 2 through 6, so -- and as pled as well where the unfairness  
4 count does not rely on the representation. So it's -- we're  
5 asking for dismissal of the unfairness count for a host of  
6 reasons.

7           And the Commission's unfairness authority has also been  
8 limited in 1994 through the addition of subsection (n) due to  
9 an unbounded and use of it. Whereas the deception, the  
10 standard for deception, Your Honor, is different, where the  
11 substantial injury and the cost benefit analysis, and the  
12 reasonable avoidability prong, those are all limited to the  
13 unfairness claim. So they're two distinct -- they're two  
14 distinct theories where they need to -- they have the  
15 present -- we would submit the present-tense limitations, but  
16 in addition the other three-part standard.

17           And we would submit the word "unfair" in section 5A also  
18 does some independent work and might perhaps be read to require  
19 something reckless.

20           **THE COURT:** Well, the Third Circuit has said that's  
21 not true.

22           **MR. PEPSON:** If I might briefly, Your Honor.

23           The Third Circuit left, we would submit, left the door a  
24 little open on what we're specifically arguing, which is, you  
25 know, something more than mere negligence. Conversely, it did

1 reject -- if I read the case, and I can be corrected, it did  
2 reject this notion that you needed unscrupulousness, but we  
3 were making a slightly different argument, which we read  
4 *Wyndham* to --

5 **THE COURT:** I think it's fair to read *Wyndham* to say  
6 you don't have to say either -- there's no culpability standard  
7 either in terms of moral culpability, being unscrupulous or a  
8 cheat, or in the standard tort culpability, being reckless or  
9 negligent.

10 But in any event, Mr. Moriarty, I'll let you have the last  
11 word.

12 **MR. MORIARTY:** So, Your Honor --

13 **THE COURT:** Why isn't unfairness enough?

14 **MR. MORIARTY:** I'm sorry. So our argument is that the  
15 three elements of 5(n) are both necessary and sufficient to  
16 establish unfairness, and that is consistent with precedent in  
17 the Ninth Circuit, it's consistent with the Third Circuit  
18 decision. And to the extent -- you know, related to the Third  
19 Circuit decision, which left the door open that if there were  
20 sort of an additional fourth prong, it would be satisfied in  
21 cases where the FTC has also alleged deception.

22 **THE COURT:** Okay. I will take this under submission.  
23 And it's probably going to be a little bit of time before I get  
24 it out.

25 But what else is happening? Have you done your initial

1 disclosures? What's going on?

2 **MR. MORIARTY:** I'll defer to my counsel on this.

3 **THE COURT:** Oh, okay.

4 **MR. MASSARI:** Good morning, Your Honor. Patrick  
5 Massari.

6 We had our 26F conference yesterday, and we made a good  
7 bit of progress, I think, and we are endeavoring to move  
8 forward, understanding that these motions or this motion does  
9 not stay discovery.

10 I would say, Your Honor, if I may be so bold, that the  
11 point about specific plaintiffs and specific products for  
12 specific timelines or dates even would be very helpful to cabin  
13 the discovery so that it doesn't become a repeat of a three  
14 and-a-half year investigation.

15 **THE COURT:** Well, let me just jump in on that.

16 I mean, discovery is there to help you define the  
17 parameters; right?

18 **MR. MASSARI:** Yes, sir.

19 **THE COURT:** And that's your first round of discovery,  
20 and what we're talking about here. And you have a little bit  
21 of a headstart because they have all these attachments showing  
22 the exact products. I'm assuming those are the ones at issue;  
23 is that right?

24 **MS. BERGER:** Yes, that's correct.

25 **MR. MASSARI:** Well, we don't know the dates, Your



1 Honor.

2 **THE COURT:** Well, you just ask. I mean, that's what  
3 discovery is for.

4 If you're saying this is another mystery, I think we part  
5 company on that. I don't think that's a fair characterization.  
6 I think you know enough to ask for discovery, and that's all  
7 *Twombly* and *Iqbal* requires - fair notice under Rule 8. That's  
8 all you need is fair notice. I think you have fair notice. I  
9 don't think this is a black box of I'll put my hand in, who  
10 knows what I'm going to pull out. I mean, the goods are going  
11 to be readily identifiable by the FTC. I mean, you have a  
12 discrete set of products that you're looking at; is that right?

13 **MS. BERGER:** So that is correct as to the claims at  
14 issue in the case; however, as to unfairness and risks or harms  
15 that consumers may have suffered, we will need to  
16 potentially -- and we discussed this yesterday -- look at a  
17 broader range of consumer complaints and inquiries and evidence  
18 of impact on consumers, Your Honor.

19 **THE COURT:** Well, I mean, so you're going to amend the  
20 complaint at some point?

21 **MS. BERGER:** So if we discover additional specific  
22 support for our allegations, that is likely what we would do.

23 **THE COURT:** Yes. But right now you have a bunch of  
24 products in mind that you think the complaint covers?

25 **MS. BERGER:** Correct. Yes, Your Honor.

1           **THE COURT:** All right. So you should tell Mr. Massari  
2 what they are.

3           **MS. BERGER:** Correct.

4           **MR. MASSARI:** And the time frame.

5           In the *LabMD* case, Your Honor, we did have a relevant time  
6 period that became --

7           **THE COURT:** Was there a limitations period under the  
8 FTC Act?

9           **MS. BERGER:** No, your Honor.

10          **THE COURT:** Okay.

11          **MR. MASSARI:** Well, I'm not sure that's correct.

12          **MS. BERGER:** Well, we are -- so just based on our  
13 discussion yesterday --

14          **THE COURT:** You need to talk to the judge, not to each  
15 other. Just talk to me.

16          **MS. BERGER:** Yes.

17          **MR. MASSARI:** Sorry, Your Honor.

18          **THE COURT:** Is there an FTC -- is there a statute of  
19 limitations under the Act?

20          **MS. BERGER:** No, your Honor.

21          **THE COURT:** Okay. So then what's the time frame?

22          **MS. BERGER:** So the initial pre-complaint  
23 investigation went back as far as 2011, and that is the time  
24 frame covered by the facts alleged in the complaint. However,  
25 events that have occurred since the conclusion of the

1 pre-complaint investigation are more recent. So the private  
2 key breach was in 2015, and there have been other reported  
3 security issues. That is the continuing nature of the  
4 complaint, is that there have been additional reported security  
5 flaws affecting their products.

6 **THE COURT:** All right. So at minimum, it's 2015 to  
7 the present. Maybe you go back to 2011 at the outer boundary.  
8 That seems to be about right.

9 **MR. MASSARI:** Thank you, Your Honor.

10 **THE COURT:** Okay. Anything else I can help you with?

11 **MS. BERGER:** So the seal issue is still pending.

12 **THE COURT:** Seal?

13 **MS. BERGER:** So our complaint -- our Commission rules  
14 require us to give a party notice and an opportunity to object  
15 when they have submitted materials in a non-public  
16 investigation, as happened here, and designated them as  
17 confidential. So we identified portions of several paragraphs  
18 and filed them under seal.

19 **THE COURT:** In the complaint?

20 **MS. BERGER:** Yes. There is a redacted version of the  
21 complaint, Your Honor.

22 **THE COURT:** And there's a pending motion to seal?

23 **MS. BERGER:** So we filed an administrative motion to  
24 file under seal portions of the plaintiff's complaint at docket  
25 entry three, when we filed our complaint, of course, and

1 opposing counsel filed their -- made a filing also.

2 **MR. MASSARI:** We did. And we discussed yesterday,  
3 Your Honor -- I'm going to discuss this. I don't want to take  
4 up too much of the Court's time on this.

5 **THE COURT:** No. We can work it out now. Can we work  
6 it out now or -- well, you're going to talk to your client.  
7 What are you going to do?

8 **MR. MASSARI:** If I could have until Monday.

9 **THE COURT:** Yeah, that's fine.

10 **MR. MASSARI:** Yeah, if that would work for Your Honor.

11 **THE COURT:** I mean, none of this seems explosive, I  
12 mean --

13 **MR. MASSARI:** Yeah.

14 **THE COURT:** I'm sorry. I did not know there was a  
15 pending -- so what is the question? The question is you want  
16 me to unseal or you want to wait for the defendant to --

17 **MS. BERGER:** So when we made our initial filing in  
18 docket entry three, we took no position, because we were giving  
19 them notice to come forward and present any justification.

20 **THE COURT:** Oh, I see.

21 **MS. BERGER:** They have since made a filing, and we did  
22 not, after reviewing that, see a reason why there is a  
23 justification, why it meets the standard to be sealable.

24 **THE COURT:** I see. So you're still working that out;  
25 is that what you're saying?

1           **MR. MASSARI:** Yes, Your Honor.

2           And if I may just quickly. The cause of our concern, as a  
3 threshold matter, was the sort of general nature of the  
4 pleadings, and how that -- everything that was submitted in the  
5 investigatory process was confidential, and FTC accepted it as  
6 such. And we just want to make sure we're not opening --

7           **THE COURT:** Let me -- so you mean your client made  
8 submissions that are confidential?

9           **MR. MASSARI:** That's correct.

10          **THE COURT:** Okay. All right. So you don't want any  
11 of those to get out?

12          **MR. MASSARI:** Well, we need -- that's one of the  
13 reasons why I would like to know what products we're talking  
14 about and what's the time frame, so that we can -- we're  
15 talking almost a half million documents, so I'd like to narrow  
16 that down. There are duplications.

17          **MS. BERGER:** Of course.

18          **MR. MASSARI:** But that was the source of the concern  
19 initially. When we got the complaint, we just -- I just wanted  
20 to make sure that we weren't waiving anything with respect to  
21 confidentiality.

22          **THE COURT:** That's fine. That's certainly within your  
23 rights.

24          **MS. BERGER:** So we would not be seeking to unseal the  
25 entire record from the prior investigation, only the materials

1 that are redacted in the complaint at present.

2 **THE COURT:** All right. So the underlying submissions  
3 will stay confidential.

4 **MS. BERGER:** Yeah. We can continue to work out  
5 through -- now that we are in contact, and we are working  
6 together as opposing counsel, we can continue to work with them  
7 in advance of disclosure.

8 **THE COURT:** So you're talking about the actual  
9 complaint paragraph; is that right?

10 **MS. BERGER:** Exactly, yes.

11 **THE COURT:** So how much time would you like to finish  
12 that process?

13 **MR. MASSARI:** If I could have until Monday, close of  
14 business Monday, Eastern --

15 **THE COURT:** Just take a week, okay. Just let me know  
16 in a week. Give yourselves some time.

17 **MR. MASSARI:** Thank you, Your Honor.

18 One last thing. I'm sorry. Apologize to interrupt.

19 When you were talking about the *LabMD* case, there is the  
20 11th Circuit appeal, which is in briefing. And one of the  
21 issues is the reasonableness under principles applicable to  
22 construing statutes of the FTC's construction of section 5(n),  
23 including but not limited to the actual substantial harm or  
24 likelihood of substantial harm, which is how the statute reads.

25 So there is another court that's likely -- I understand

1 what you said earlier. We are in the Ninth Circuit. I would  
2 offer that there are no -- starting with *Neovi*, there are no  
3 cases in the Ninth Circuit, as the ALJ said in the *LabMD* case,  
4 that have been found where there wasn't actual hard damages.  
5 *Wyndham* had 10.6 million, 649,000 or 619,000 victims.

6 So our point only on that was --

7 **THE COURT:** You're not talking about deception, which  
8 is clearly an argument. Each and every product, if the FTC  
9 prevails on its theory of deception, each and every product was  
10 the fruit of misrepresentation. So that purchase price remains  
11 to be determined, but it will be quantifiable.

12 So what specifically -- what number is missing under  
13 unfairness?

14 **MR. MASSARI:** I don't think that that would constitute  
15 actual harm to a consumer in a data security realm. There are  
16 no victims. There's no breach, unlike *Wyndham*, unlike *Neovi*.

17 **THE COURT:** For unfairness purposes.

18 **MR. MASSARI:** Correct. And as Your Honor noted, the  
19 nucleus of facts, I would say the counts sort of overlap each  
20 other to some degree. I understand deception, they're not  
21 required to prove an actual harm, but there are requirements  
22 that sort of overlap. And I just -- I'm not trying to -- it  
23 was the *LabMD* case, but --

24 **THE COURT:** I just want to hear what you're saying.  
25 Go ahead.

1           Look, the *LabMD* is just substantively different. I mean,  
2       it's a lab that got hacked, and people's medical records got  
3       stolen.

4           And *Wyndham* is substantively different. It was a database  
5       that got hacked. This is good old-fashioned you sold a good  
6       that didn't stand up to what it was supposed to do, and that  
7       was both deceptive, because you told people it was going to do  
8       it and it didn't, and it was unfair because people, you know,  
9       should be able to rely on buying a product, and it's not going  
10      to blow up on them, so to speak, or it's not going to turn over  
11      all their data secretly, or it's not going to allow a burglar  
12      into the house, metaphorically.

13          Whether the FTC proves all of this, who knows. We're only  
14      at the pleading stage. And so I'm not --

15           **MR. MASSARI:** I take the point.

16           **THE COURT:** -- telling you hook, line and sinker what  
17      they're selling, but this is are they entitled to go forward.

18           **MR. MASSARI:** I understand.

19           **THE COURT:** That's all I'm saying.

20           **MR. MASSARI:** I understand.

21          And with Your Honor's permission, I'll go back to  
22      Washington with two, "*Twiqbal*," and "if the horse falls down  
23      and, Your Honor, you fall down, you've got to walk," and I will  
24      take that back to my office in Washington.

25   (Laughter)



1           **THE COURT:** Be temperate in sharing this.

2                               (Laughter)

3           **MR. MASSARI:** Yes, sir.

4           **THE COURT:** Okay. So you're on your way then.

5           I'll get an order out.

6           I mean, look, this looks like something you might want to  
7 start talking about in terms of a resolution. I mean, is that  
8 too early?

9           **MR. MASSARI:** I mentioned it yesterday. I've gone  
10 through a number of -- not with an agency, but arbitration  
11 where I've had some success.

12          **THE COURT:** Arbitration?

13          **MS. BERGER:** We have institutional concerns about  
14 arbitrations specifically, but we did begin to talk about  
15 alternative dispute resolution.

16          **MR. MASSARI:** Mediation, I think that's the obvious  
17 next step.

18          **THE COURT:** I'm sure everybody agrees that, you know,  
19 if you can see your way to some kind of understanding --

20          **MR. MASSARI:** Yes, Your Honor.

21          **THE COURT:** -- why not get there sooner rather than  
22 later in terms of expense and time? Now, if you don't, that's  
23 fine. I mean, we're a trial court, so that's what I'm here  
24 for.

25          But is it -- would you like to go to a magistrate judge

1     sooner rather than later? I can arrange that, or can at least  
2     put someone on the case, so to speak, so that when you're ready  
3     you can just make it happen.

4             **MS. BERGER:** I think the agency has sufficient  
5     information about the type of relief we want for that to be  
6     productive on our side.

7             **THE COURT:** Okay.

8             **MR. MASSARI:** Yeah. I think the sticking point on  
9     that past history is the duration of any consent order and the  
10    terms, which the Eleventh Circuit also is dealing with or dealt  
11    with in the granting of the stay.

12            I'd like to, because we were really focused on this --

13            **THE COURT:** That's fine. You want to take some time,  
14    yeah.

15            **MR. MASSARI:** And I'd like to advise the Court, if I  
16    may, as we advised counsel yesterday for FTC, we are intent on  
17    filing a 12(b)(2) motion challenging personal jurisdiction on  
18    behalf of D-Link Corp.

19            **THE COURT:** The overseas entity?

20            **MR. MASSARI:** Yes, sir.

21            **THE COURT:** Okay. I was kind of wondering about that  
22    myself. Do you really need them? I mean, you have --

23            **MS. BERGER:** So this gets to an issue under seal, the  
24    facts that we allege that --

25            **THE COURT:** Well, I read the unredacted version, so --

1           **MS. BERGER:** Yes, okay. So as we understand --

2           **THE COURT:** I'm not in the dark.

3           **MS. BERGER:** -- the overseas entity does control the  
4 practices at issue.

5           **THE COURT:** But you have a U.S. entity that would be  
6 responsible for complying with a U.S. consent decree.

7           **MS. BERGER:** Oh, you mean for a consent decree, for an  
8 agreement could we --

9           **THE COURT:** Well, even as a party, I mean, why do you  
10 need the overseas entity?

11           **MS. BERGER:** So if, hypothetically, without revealing  
12 anything that is currently under seal, if, hypothetically, a  
13 party controls all the testing and remediation of flaws and the  
14 development process itself, it's difficult for us to develop a  
15 factual record of the failures that we allege without that  
16 discovery.

17           **THE COURT:** I'm going to leave you two with the task  
18 of talking substantively in good faith about whether you can  
19 work this out, okay. It seems a little much to put a 12(b)(2)  
20 motion to the test when I think you can probably get what you  
21 want without having to rope in an overseas corporation, okay.  
22 So why don't you just listen to each other, talk about that.  
23 If you have to bring it, you have to bring it, but I think  
24 these things can often be worked out, okay.

25           And I understand FTC is nervous about whether they're

1 going to have enforcement scope, I think you can work all that  
2 out.

3 **MR. MASSARI:** I was going to offer up, after our talk  
4 yesterday, we had not met or spoken directly, I wanted to -- we  
5 were going to talk about offering to stipulate to have that  
6 company taken out of the case without having to file a motion,  
7 but we didn't get there yesterday.

8 **THE COURT:** Yeah. So just build on that, okay.

9 **MR. MASSARI:** Yes, sir.

10 **THE COURT:** See if you can work something out without  
11 having to go through --

12 **MS. BERGER:** And just so that I'm clear on what we  
13 would be working out, would it be a means for us to obtain  
14 relevant documents and information regarding the U.S?

15 **THE COURT:** No. It's just a very practical exercise  
16 of can the FTC satisfy itself that it can get what it believes  
17 is appropriate as a remedy without having to keep the overseas  
18 entity in the case.

19 **MS. BERGER:** Yes. For purposes of a remedy, I think  
20 we could, but for purposes of establishing liability at a  
21 trial, we would need information that based on our  
22 pre-complaint investigation we understand to be exclusively  
23 within the control of the --

24 **THE COURT:** You don't need to be a party to get  
25 discovery. You can get discovery from third parties.

1           **MS. BERGER:** I see. I understand what you're  
2 suggesting loud and clear.

3           **THE COURT:** You don't have to be -- yeah, so if all  
4 you're worried about -- maybe Mr. Massari might see his way to  
5 saying, *we will respond on behalf of the overseas entity to*  
6 *reasonable discovery.* He's not going to say you get  
7 everything. But, you know, if they agree they're not going to  
8 come to me later and say, *Well, Your Honor, they're in Taiwan*  
9 *or wherever they are, so there's no discovery,* then you can  
10 probably work something out, okay?

11           **MS. BERGER:** I understand.

12           **THE COURT:** So you understand?

13           **MR. MASSARI:** Yes, Your Honor.

14           **THE COURT:** FTC just seems to be worried about -- they  
15 want to make sure they have access to certain types of  
16 documents.

17           **MR. MASSARI:** Yes, Your Honor.

18           **THE COURT:** And if you all concede to that -- getting  
19 to that point in a reasonable fashion, maybe you can agree to  
20 dismiss the overseas entity.

21           **MR. MASSARI:** Yes, Your Honor. And that would save, I  
22 think, the parties and the Court a lot of time and expense. A  
23 lot of these documents are in Mandarin Chinese. And of course  
24 the D-Link Corp is in Taiwan, doesn't sell any products in this  
25 country. So we'll work on that.

1           **THE COURT:** Yeah, okay. Anything else I can help you  
2 with?

3           **MS. BERGER:** No.

4           **THE COURT:** All right. Thank you for letting  
5 Mr. Pepson drive. It was well done.

6           **ALL COUNSEL:** Thank you, Your Honor.

7                   (Proceedings adjourned at 12:05 p.m.)

8                               ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 10, 2017

A handwritten signature in cursive script, appearing to read 'Rhonda L. Aquilina', is written over a horizontal line.

Rhonda L. Aquilina, CSR No. 9956, RMR, CRR  
Court Reporter

# EXHIBIT B



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*Attorneys for Plaintiff Federal Trade Commission*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

D-LINK CORPORATION, *et al.*,

Defendants.

CIVIL ACTION NO.  
3:17-CV-00039-JD

**PLAINTIFF FEDERAL TRADE  
COMMISSION'S INITIAL  
DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff Federal Trade Commission ("FTC" or Commission), hereby serves its initial disclosures on D-Link Corporation ("D-Link") and D-Link Systems, Inc. ("DLS") (collectively, "Defendants" or "the Companies"). The information disclosed herein reflects information reasonably available to Plaintiff's counsel. The FTC expressly reserves the right to clarify, revise, or correct any or all of the following at any time. Pursuant to Federal Rule of Civil Procedure 26(e), the FTC will supplement its disclosures as necessary.

I. **Rule 26(a)(1)(A)(i) Disclosure – Names and, if known, the addresses and phone numbers of individuals likely to have discoverable information—along with the subjects of that information—that the FTC may use to support its claims, unless the use would be solely for impeachment:**

This information is supplied consistent with the spirit of disclosure called for in Rule 26(a) and should not be read to definitely establish or in any way limit any subject matter about which the person or entity may have information. In addition, the disclosures should not be construed as a waiver of any applicable privileges, including attorney work product.

A. Current and former customers who have purchased or used Defendants’ routers or Internet Protocol (“IP”) cameras,<sup>1</sup> or any related software, mobile apps, or other online services or portals that Defendants design, develop, market, distribute, or otherwise offer for sale or provide to U.S. consumers for use in connection with these devices (hereinafter, “the relevant devices and services”).

Defendants’ advertising, marketing, and sales of the relevant devices and services;

Defendants’ other conduct aimed at consumers relating to the relevant devices and services, including communications, customer support, and software updates;

Consumers’ complaints to Defendants relating to the relevant devices and services;

Consumers’ experiences obtaining or attempting to obtain security updates for the relevant devices and services;

Defendants’ responses to consumers’ complaints, and the extent of consumer injury; and

Information developed during discovery.

B. Retailers who have advertised, marketed, or sold the relevant devices and services.

Defendants’ advertising, marketing, and sales of the relevant devices and services, including the representations made to consumers at retailer

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<sup>1</sup> “Routers or IP cameras” includes all routers and IP cameras relevant to the unlawful conduct alleged in the Complaint. Attached hereto as Appendix A is a list of all such routers and IP cameras that Plaintiff has identified. The list of devices in Appendix A does not constitute a waiver of the FTC’s rights pursuant to Rule 26(b) to seek discovery relevant to any party’s claim or defense.

locations and Defendants' involvement in mandating, reviewing, or authorizing such representations;

The identity of consumers who have purchased or returned the relevant devices or services and the reasons;

Any complaints received from consumers regarding the relevant devices or services; and

Information developed during discovery.

C. Current and former employees, officer, directors, and other agents of Defendants for whom address and telephone number information is more readily available to Defendants, but for whom such information is provided below, insofar as it is known to Plaintiff.

In addition to the individuals listed below, any individuals likely to have discoverable information regarding:

Defendants' advertising, marketing, and sales of the relevant devices and services;

Defendants' conduct aimed at consumers relating to the relevant devices and services, including communications, customer support, and software updates;

Consumers' complaints to Defendants relating to the relevant devices and services;

Consumers' experiences obtaining or attempting to obtain security updates for the relevant devices and services;

The extent to which consumers successfully obtained security updates for the relevant devices and services;

Defendants' responses to consumers' complaints, and the extent of consumer injury;

Defendants' steps to secure any Private Key(s) used to sign software for the relevant devices and services;

Defendants' practices to secure user credentials for any mobile applications; and any subjects listed below, as applicable to named individuals; and

Information developed during discovery.

1  
2 1. William Brown  
3 [William.brown@dlink.com](mailto:William.brown@dlink.com)  
4 [wbrown@dlink.com](mailto:wbrown@dlink.com)  
5 Senior Vice President and Chief Technology Officer  
6 D-Link Systems, Inc.  
7 17595 Mt. Hermann St.  
8 Fountain Valley, California 92708

9  
10 The scope and extent of security vulnerabilities affecting the  
11 relevant devices and services and the Companies' response;

12 Customer reviews, feedback, and return data for IP cameras and  
13 routers;

14 Customers' responses to security vulnerabilities affecting the  
15 relevant devices and services;

16 The costs and benefits of steps taken to secure software for the  
17 relevant devices and services;

18 Defendants' responses to consumers' complaints, and the extent of  
19 consumer injury;

20 The steps an attacker could take to locate and exploit the relevant  
21 devices and services;

22 The Companies' statements to consumers regarding security of the  
23 relevant devices and services;

24 Product security requirements for the relevant devices and  
25 services; and

26 Information developed during discovery.

27 2. John Jimenez  
28 [John.jimenez@dlink.com](mailto:John.jimenez@dlink.com)  
Former D-Link Systems Senior Product Manager  
Surveillance and Multimedia Solutions  
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The scope and extent of security vulnerabilities affecting the  
relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and services;

Customers' responses to security vulnerabilities affecting the relevant devices and services; and

Information developed during discovery.

3. Denise Keddy

[Denise.keddy@dlink.com](mailto:Denise.keddy@dlink.com)

Former Senior Marketing Communications Manager

D-Link Systems, Inc.

Customer reviews, feedback, and return data for IP cameras and routers;

Customers' responses to security vulnerabilities affecting the relevant devices and services;

Communications with consumers regarding security updates for the relevant devices and services;

The Companies' response to security vulnerabilities affecting the relevant devices and services;

The steps an attacker could take to locate and exploit the relevant devices and services;

The Companies' statements to consumers regarding security of the relevant devices and services; and

Information developed during discovery.

4. Daniel Kelly

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Customer reviews, feedback, and return data for IP cameras and routers;

Customers' responses to security vulnerabilities affecting the relevant devices and services;

1  
2 Communications with consumers regarding security updates for  
the relevant devices and services;

3 The Companies' response to security vulnerabilities affecting the  
4 relevant devices and services;

5 The steps an attacker could take to locate and exploit the relevant  
6 devices and services;

7 The Companies' statements to consumers regarding security of the  
8 relevant devices and services; and

9 Information developed during discovery.

10 5. Vance Kozik  
11 Director, Product Marketing/IP Surveillance  
12 D-Link Systems, Inc  
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Fountain Valley, California 92708

13 Defendants' advertising, marketing, and sales of the relevant  
14 devices and services, including the representations made to  
15 consumers at retailer locations and Defendants' involvement in  
mandating, reviewing, or authorizing such representations;

16 The security features included in the relevant devices and services;

17 Customers' responses to security vulnerabilities affecting the  
18 relevant devices and services;

19 The steps an attacker could take to locate and exploit the relevant  
20 devices and services;

21 Consumer steps to obtain security updates for the relevant devices  
and services; and

22 Information developed during discovery.

23 6. Ted Kuo, PhD  
24 [Ted.kuo@dlink.com](mailto:Ted.kuo@dlink.com)  
25 Cell: (650) 704-2826  
26 Executive Consultant (former Global Strategy Officer)  
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The scope and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

7. Ken Loyd  
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Defendants' advertising, marketing, and sales of the relevant devices and services, including the representations made to consumers at retailer locations and Defendants' involvement in mandating, reviewing, or authorizing such representations;

The security features included in the relevant devices and services;

Customers' responses to security vulnerabilities affecting the relevant devices and services;

Consumer steps to obtain security updates for the relevant devices and services; and

Information developed during discovery.

8. Oscar Navarro  
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1 The scope and extent of security vulnerabilities affecting the  
2 relevant devices and services and the Companies' response;

3 The coding and maintenance history for the source code for the  
4 relevant devices and services;

5 Communications with consumers regarding security updates for  
6 the relevant devices and services;

7 The Companies' statements to consumers regarding security of the  
8 relevant devices and services;

9 Consumers' experiences obtaining or attempting to obtain security  
10 updates for the relevant devices and services;

11 The extent to which consumers successfully obtained security  
12 updates for the relevant devices and services;

13 Product security requirements for the relevant devices and  
14 services; and

15 Information developed during discovery.

16 9. AJ Wang  
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20 Orange County  
21 California

22 The scope and extent of pre-release security testing, review, and  
23 remediation conducted on the relevant devices and services and the  
24 vulnerabilities found;

25 Product security requirements for the relevant devices and  
26 services;

27 The coding and maintenance history for the source code for the  
28 relevant devices and services;

The scope and extent of security vulnerabilities affecting the  
relevant devices and services and the Companies' response;

Communications with consumers regarding security updates for  
the relevant devices and services;



The costs and benefits of steps taken to secure software for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

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The scope and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

The coding and maintenance history for the source code for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

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The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Consumer steps to obtain security updates for the relevant devices and services;

The coding and maintenance history for the source code for the relevant devices and services;

1 The Companies' statements to consumers regarding security of the  
2 relevant devices and services;

3 Product security requirements for the relevant devices and  
4 services; and

5 Information developed during discovery.

6 12. Bingyi Chen  
7 Chief Technology Officer  
8 D-Link Corporation  
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10 Neihu District,  
11 Taipei City  
12 Taiwan 114

13 The nature and extent of security testing, review, and remediation  
14 conducted on the relevant devices and services and the  
15 vulnerabilities found;

16 The coding and maintenance history for the source code for the  
17 relevant devices and services;

18 Product security requirements for the relevant devices and  
19 services;

20 The scope and extent of security vulnerabilities affecting the  
21 relevant devices and services;

22 The costs and benefits of steps taken to secure software for the  
23 relevant devices and services; and

24 Information developed during discovery.

25 13. Chris Chen  
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1 The nature and extent of pre-release security testing, review, and  
2 remediation conducted on the relevant devices and services and the  
3 vulnerabilities found;

4 The scope and extent of security vulnerabilities affecting the  
5 relevant devices and services and the Companies' response;

6 Product security requirements for the relevant devices and  
7 services; and

8 Information developed during discovery.

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16 The nature and extent of security testing and review conducted on  
17 the relevant devices and services and the vulnerabilities found;

18 The scope and extent of security vulnerabilities affecting the  
19 relevant devices and services and the Companies' response;

20 Product security requirements for the relevant devices and  
21 services; and

22 Information developed during discovery.

- 23 15. Kevin Chen  
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The scope and extent of pre-release security testing, review, and  
remediation conducted on the relevant devices and services and the  
vulnerabilities found;

The costs and benefits of steps taken to secure software for the  
relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

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The scope and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

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Taipei City  
Taiwan 114

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

The coding and maintenance history for the source code for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

18. Roger Kao  
[Roger\\_kao@dlink.com.tw](mailto:Roger_kao@dlink.com.tw)  
Former Global Chairman  
D-Link Corporation  
No. 289, Xinhua 3<sup>rd</sup> Rd.  
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Taipei City  
Taiwan 114

The nature and extent of pre-release security testing and review conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

The costs and benefits of steps taken to secure software for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

19. Ping Chen  
[Ping\\_chen@dlink.com.tw](mailto:Ping_chen@dlink.com.tw)  
Former Chief Technology Officer, D-Link Corporation  
Former VP of Alphanetworks  
D-Link Corporation  
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Taipei City  
Taiwan 114

The nature and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

The costs and benefits of steps taken to secure software for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

20. Daniel Hsu  
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Product Planner  
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The nature and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

The costs and benefits of steps taken to secure software for the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

21. Eric Hw Kuo  
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Taiwan 114

The nature and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

22. Karena Lin  
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Taiwan 114

The nature and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

23. Robert Lin  
[Robert\\_Lin@dlink.com.tw](mailto:Robert_Lin@dlink.com.tw)  
Senior Director  
D-Link Corporation  
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Neihu District,  
Taipei City  
Taiwan 114

The nature and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response; and

Information developed during discovery.

24. Ginger Liu  
[Ginger\\_liu@dlink.com.tw](mailto:Ginger_liu@dlink.com.tw)  
Global Strategy Office  
D-Link Corporation  
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Neihu District,  
Taipei City

Taiwan 114

Product security requirements for the relevant devices and services;

Defendants' advertising, marketing, and sales of the relevant devices and services, including the representations made to consumers at retailer locations and Defendants' involvement in mandating, reviewing, or authorizing such representations;

Customer reviews, feedback, and return data for IP cameras and routers;

Customers' responses to security vulnerabilities affecting the relevant devices and services;

Communications with consumers regarding security updates for the relevant devices and services;

The costs and benefits of steps taken to secure software for the relevant devices and services; and

Information developed during discovery.

25.

Hans Liu

[Hans.Liu@dlink.com.tw](mailto:Hans.Liu@dlink.com.tw)

Director in Surveillance and Connected Home

D-Link Corporation

No. 289, Xinhua 3<sup>rd</sup> Rd.

Neihu District,

Taipei City

Taiwan 114

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response.

Customer reviews, feedback, and return data for IP cameras and routers;

Customers' responses to security vulnerabilities affecting the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.



1  
2 26. Mac Mac  
3 [Mac\\_mac@dlink.com.tw](mailto:Mac_mac@dlink.com.tw)  
4 D-Link Corporation  
5 No. 289, Xinhua 3<sup>rd</sup> Rd.  
6 Neihu District,  
7 Taipei City  
8 Taiwan 114

9  
10 The scope and extent of security vulnerabilities affecting the  
11 relevant devices and services and the Companies' response;

12 The coding and maintenance history for the source code for the  
13 relevant devices and services;

14 Product security requirements for the relevant devices and  
15 services; and

16 Information developed during discovery.

17  
18 27. Quenton Miao  
19 [Quenton\\_miao@dlink.com.tw](mailto:Quenton_miao@dlink.com.tw)  
20 Employee of D-Link Corporation/Representative Director Alpha  
21 Networks, Inc.  
22 No. 289, Xinhua 3<sup>rd</sup> Rd.  
23 Neihu District,  
24 Taipei City  
25 Taiwan 114

26 The scope and extent of pre-release security testing, review, and  
27 remediation conducted on the relevant devices and services and the  
28 vulnerabilities found;

The coding and maintenance history for the source code for the  
relevant devices and services;

The scope and extent of security vulnerabilities affecting the  
relevant devices and services and the Companies' response;

Product security requirements for the relevant devices and  
services; and

Information developed during discovery.

26 28. Mandy Su  
27 [Mandy\\_Su@dlink.com.tw](mailto:Mandy_Su@dlink.com.tw)

Director  
D-Link Corporation  
No. 289, Xinhua 3<sup>rd</sup> Rd.  
Neihu District,  
Taipei City  
Taiwan 114

The Companies' response to security vulnerabilities affecting the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

29. Chris Wu  
[Chris.Wu@dlink.com.tw](mailto:Chris.Wu@dlink.com.tw)  
D-Link Corporation  
No. 289, Xinhua 3<sup>rd</sup> Rd.  
Neihu District,  
Taipei City  
Taiwan 114

The scope and extent of pre-release security testing, review, and remediation conducted on the relevant devices and services and the vulnerabilities found;

The scope and extent of security vulnerabilities affecting the relevant devices and services and the Companies' response;

Other measures to protect the security of the relevant devices and services;

Product security requirements for the relevant devices and services; and

Information developed during discovery.

D. Kuang-Chun Hung  
Onward Security Corporation  
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Minqun Rd.  
Xindian Dist.  
New Taipei City 23141  
Taiwan

1 The scope and extent of pre-release security testing, review, and  
2 remediation conducted on the relevant devices and services and the  
3 vulnerabilities found;

4 The Companies' response to security vulnerabilities affecting the relevant  
5 devices and services;

6 The costs and benefits of steps taken to secure software for the relevant  
7 devices and services; and

8 Information developed during discovery.

9 E. TsoJen Lin  
10 Onward Security Corporation  
11 Rm. 1, No. 98  
12 Minquan Rd.  
13 Xindian Dist.  
14 New Taipei City 23141  
15 Taiwan

16 The scope and extent of pre-release security testing, review, and  
17 remediation conducted on the relevant devices and services and the  
18 vulnerabilities found;

19 The Companies' response to security vulnerabilities affecting the relevant  
20 devices and services;

21 The costs and benefits of steps taken to secure software for the relevant  
22 devices and services; and

23 Information developed during discovery.

24 F. Cheryl Thomas  
25 Federal Trade Commission  
26 c/o Laura D. Berger  
27 901 Market Street, Suite 570  
28 San Francisco, CA 94103  
(415) 848-5100

The appearance, presentation, and content of certain of Defendants'  
security statements; and

Internet search results for certain of Defendants' IP camera models, on or  
around July 2016.

G. Internet Service Providers and other businesses that provide support to consumers whose home networks or routers are or may be infected with malicious software.

The nature and extent of security vulnerabilities affecting consumers' home networks, IP cameras or routers;

The nature and extent of malicious software targeting the relevant devices and services or consumers' home networks and consumer devices generally;

The nature and extent of consumer support calls related to the relevant devices and services or to security vulnerabilities affecting them; and

Information developed during discovery.

**II. Rule 26(a)(1)(A)(ii) Disclosure – Documents, electronically stored information, and tangible things that the FTC has in its possession, custody, or control and may use to support its claims, unless solely for impeachment:**

A. Documents, electronically stored information, (and/or tangible things) produced to the FTC by Defendant D-Link Systems ("DLS") in response to the FTC's requests and civil investigative demands.

Located at:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

FTC Western Regional Office – San Francisco  
901 Market Street, Suite 570  
San Francisco, CA 94103

B. Documents, electronically stored information (and/or tangible things) obtained by Defendant DLS from Defendant D-Link Corporation, and produced voluntarily to the FTC.

Located at:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

FTC Western Regional Office – San Francisco  
901 Market Street, Suite 570  
San Francisco, CA 94103

C. Publicly-available documents, electronically stored information, and/or tangible things relating to the relevant devices and services collected by staff in the course of the FTC pre-complaint investigation of D-Link Systems, Inc.

Located at:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

**III. Rule 26(a)(1)(A)(iii) Disclosure – Damages:**

The FTC seeks the imposition of equitable relief (not legal damages), including a permanent injunction against Defendants; the imposition of various monitoring provisions; reimbursement of costs and expenses; and such additional equitable relief as the Court may determine to be just and proper.

**IV. Rule 26(a)(1)(A)(iv) Disclosure – Insurance:**

Not applicable as to the FTC

Dated: March 22, 2017

Respectfully submitted,

/s/ Laura D. Berger

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Federal Trade Commission  
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San Francisco, CA 94103  
Tel: (202) 326-2471

KEVIN H. MORIARTY  
CATHLIN TULLY  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Mail Drop CC-8232  
Washington, DC 20580

*Attorneys for Plaintiff  
Federal Trade Commission*

## Appendix A

Routers	IP cameras
DIR-412	DCS-8xxL/DCS-DCS-825L
DIR-505	DCS-9xx
DIR-615	DCS-930L
DIR-626L	DCS-931L
DIR-636L	DCS-932L
DIR-645	DCS-933L/1150
DIR-808L	DCS-934L
DIR-810L	DCS-935L
DIR-815	DCS-940/940L
DIR-817L	DCS-942L (and “newer” cameras as of
DIR-818L	January 2013)
DIR-820L	DCS-943L
DIR-822	DCS-960L
DIR-823	DCS-1100/1100L
DIR-826L	DCS-1130/1130L
DIR-830L	DCS-2103
DIR-836L	DCS-2130
DIR-850L	DCS-2132L
DIR-855	DCS-2136L
DIR-868L	DCS-2210
DIR-880L	DCS-2230
DIR-890L	DCS-2310/2310L
DIR-895L	DCS-2330/2330L
	DCS-2332L
	DCS-2360L
	DCS-3112
	DCS-3410
	DCS-3411
	DCS-3430
	DCS-3710
	DCS-3716
	DCS-5009L
	DCS-5010L
	DCS-5020L
	DCS-5029L
	DCS-5202L
	DCS-5211/5211L
	DCS-5222/5222L
	DCS-5605
	DCS-5635
	DCS-6004L
	DCS-6010L
	DCS-6210

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DCS-6510 DCS-6511 DCS-6513 DCS-6616 DCS-6818 DCS-681x DCS-7010L DCS-7413 DCS-7513
---

**CERTIFICATE OF SERVICE**

I, Laura D. Berger, declare as follows:

I hereby certify that on March 22, 2017, in San Francisco, California, I served a true and correct copy of the Federal Trade Commission's Rule 26(a)(1)(A) Initial Disclosures to the following counsel for D-Link Systems, Inc., by electronic mail:

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laura.hurtado@pillsburylaw.com

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

Executed on March 22, 2017

/s/ Laura D. Berger  
LAURA D. BERGER



# EXHIBIT C

**ORIGINAL**

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Attorneys for Plaintiff  
FUJITSU LIMITED

**E-FILING**

**ADR**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FUJITSU LIMITED,

Plaintiff,

v.

BELKIN INTERNATIONAL, INC.,  
BELKIN, INC., D-LINK CORPORATION,  
D-LINK SYSTEMS, INC., NETGEAR, INC.,  
ZYSXEL COMMUNICATIONS CORPORATION,  
and ZYSXEL COMMUNICATIONS, INC.,

Defendants.

**CV 10-03972 JL**

CASE NO.

**ORIGINAL COMPLAINT**

**DEMAND FOR JURY TRIAL**

**ORIGINAL COMPLAINT**

Plaintiff, Fujitsu Limited ("Fujitsu"), brings this action for patent infringement and alleges as follows:

**THE PARTIES**

1. Plaintiff Fujitsu is a corporation organized and existing under the laws of Japan and conducting business from 1-1 Kamikodanaka 4-chome, Nakahara-ku, Kawasaki-shi, Kanagawa-ken, 211-8588 Japan.

2. On information and belief, defendants Belkin International, Inc. and Belkin, Inc. are corporations organized and existing under the laws of the State of Delaware, with a principal place of business located at 12045 E. Waterfront Drive, Playa Vista, CA 90094. Defendants Belkin International, Inc. and Belkin, Inc. will be referred to herein individually and collectively as "Belkin."

3. On information and belief, defendant D-Link Corporation is a Taiwanese corporation, with its principal place of business located at No. 289, Sinhu 3rd Rd., Neihsu District, Taipei, Taiwan. On information and belief, defendant D-Link Systems, Inc. is organized under the laws of the State of California, with its principal place of business located at 17595 Mt. Herrmann St., Fountain Valley, California 92708. Defendants D-Link Corporation and D-Link Systems, Inc. will be referred to herein individually and collectively as "D-Link."

4. On information and belief, defendant Netgear, Inc. ("Netgear") is a Delaware corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 350 E. Plumeria Dr., San Jose, California 95134.

5. On information and belief, defendant ZyXEL Communications Corporation is a Taiwanese corporation, with its principal place of business located at No. 6, Innovation Rd. II Science Park, Hsinchu, 300, Taiwan. On information and belief, defendant ZyXEL Communications, Inc. is organized under the laws of the State of California, with its principal place of business located at 1130 N. Miller St., Anaheim, CA 92806. Defendants ZyXEL Communications Corporation and ZyXEL Communications, Inc. will be referred to herein individually and collectively as "ZyXEL."

#### JURISDICTION

6. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over all the defendants, which have conducted and continue to conduct business in the State of California and in this Judicial District. All defendants committed acts of patent infringement alleged herein within the State of

1 California and, more particularly, within this Judicial District. Moreover, the defendants  
2 purposefully and voluntarily placed their infringing products into the stream of commerce with  
3 the expectation that they will be purchased by consumers in this Judicial District. These  
4 infringing products have been and continue to be purchased by consumers in this Judicial  
5 District.

#### 6 **VENUE**

7 8. Venue is proper in the Northern District of California under 28 U.S.C. §§ 1391(b)  
8 and 1400(b) because, upon information and belief, acts and transactions constituting at least a  
9 subset of the violations alleged herein occurred in this Judicial District and because one or more  
10 of the defendants reside and transact business in this Judicial District. Venue is also proper in  
11 this Judicial District under 28 U.S.C. § 1391(c) because the defendants are subject to personal  
12 jurisdiction in this District.

#### 13 **INTRADISTRICT ASSIGNMENT**

14 9. Because this case is an Intellectual Property Action, it is not subject to assignment  
15 to a particular location or division of the Court under Local Rule 3-2(c).

#### 16 **COUNT ONE: PATENT INFRINGEMENT**

17 10. Fujitsu incorporates by reference Paragraphs 1 through 9, as if fully set forth  
18 herein.

19 11. On October 18, 1994, United States Patent No. 5,357,091 duly and legally issued.  
20 On July 11, 2000, United States Patent No. Re. 36,769, which is referred to as the "Ozawa  
21 Patent," duly and legally issued as a reissue of United States Patent No. 5,357,091. The United  
22 States Patent and Trademark Office issued a Reexamination Certificate for the Ozawa Patent on  
23 December 8, 2009. The Ozawa Patent concerns, among other things, card type input/output  
24 interface devices. A copy of the Ozawa Patent is attached hereto as "Exhibit A" and made a part  
25 hereof. A copy of the Reexamination Certificate for the Ozawa Patent is attached hereto as  
26 "Exhibit B" and made a part hereof.

12. Fujitsu is the owner of the Ozawa Patent and has the right to enforce the Ozawa Patent with respect to the defendants.

13. On information and belief, defendants make, use, offer to sell, sell, or import devices within the scope of one or more of the claims of the Ozawa Patent, including but not limited to wireless interface cards, access points, and routers.

14. On information and belief, defendants have been and still are infringing one or more of the claims of the Ozawa Patent by actively inducing others to infringe and contributing to the infringement by others of the Ozawa Patent. Defendants induce and contribute to the infringement by their end-users, as well as their resellers, partners and distributors who, on information and belief, make, use, offer to sell, sell, or import devices that infringe one or more of the claims of the Ozawa Patent, including but not limited to wireless interface cards, access points, and routers and combinations of wireless interface cards, access points, and routers.

15. On information and belief, defendant Belkin has infringed and continues to infringe the Ozawa Patent by making, using, offering to sell, selling, or importing devices within the scope of one or more of the claims of the Ozawa Patent, including wireless interface cards, access points, and routers, including but not limited to the Belkin N1 series of wireless interface cards, access points, and routers, including the F5D8011 N1 Wireless Notebook Card.

16. On information and belief, defendant D-Link has infringed and continues to infringe the Ozawa Patent by making, using, offering to sell, selling, or importing devices within the scope of one or more of the claims of the Ozawa Patent, including wireless interface cards, access points, and routers, including but not limited to the D-Link Xtreme and RangeBooster series of wireless interface cards, access points, and routers, including the DWA-652 Xtreme N Notebook Adapter.

17. On information and belief, defendant Netgear has infringed and continues to infringe the Ozawa Patent by making, using, offering to sell, selling, or importing devices within the scope of one or more of the claims of the Ozawa Patent, including wireless interface cards, access points, and routers, including but not limited to the Netgear RangeMax NEXT series of

wireless interface cards, access points, and routers including the WPN511 RangeMax Wireless PC Card.

18. On information and belief, defendant ZyXEL has infringed and continues to infringe the Ozawa Patent by making, using, offering to sell, selling, or importing devices within the scope of one or more of the claims of the Ozawa Patent, including wireless interface cards, access points, and routers, including but not limited to the ZyXEL ZyAIR series of wireless interface cards, access points, and routers, including the G-162 Wireless CardBus Card.

19. As a result, all of the defendants have been and still are infringing one or more of the claims of the Ozawa Patent as defined by 35 U.S.C. § 271 (a), (b), and/or (c). Fujitsu has suffered damage by reason of defendants' infringement and will continue to suffer additional damage until this Court enjoins the infringing conduct.

20. To the extent that defendants have continued or do continue their infringing activities after receiving notice of the Ozawa Patent, such infringement is willful, entitling Fujitsu to the recovery of increased damages under 35 U.S.C. § 284.

21. This is an "exceptional case" justifying an award of attorneys' fees and costs to Fujitsu under 35 U.S.C. § 285.

22. Fujitsu believes that defendants will continue to infringe the Ozawa Patent unless enjoined by this Court. Such infringing activity causes Fujitsu irreparable harm and will continue to cause such harm without the issuance of an injunction.

#### **JURY DEMAND**

23. Fujitsu hereby demands a jury trial on all issues so triable.

#### **PRAYER**

Fujitsu requests that the Court find in its favor and against defendants and that the Court grant the following relief:

- A. Judgment that one or more of the claims of the Ozawa Patent have been infringed, either literally and/or under the doctrine of equivalents, by defendants;

- 1 B. Judgment in favor of Fujitsu for the full amount of its actual damages caused by  
2 defendants' infringing activities, including an assessment of interest and costs;  
3 C. Judgment for increased damages for willful infringement under 35 U.S.C. § 284;  
4 D. Judgment that this is an "exceptional case" and awarding Fujitsu its reasonable  
5 attorneys' fees and costs under 35 U.S.C. § 285;  
6 E. Judgment that the defendants be permanently enjoined from further activity or  
7 conduct that infringes the claims of the Ozawa Patent; and  
8 F. Judgment that the Court award Fujitsu any and all other relief as is just and proper  
9 under the circumstances.

10 Dated: September 3, 2010

Respectfully submitted,

12 BAKER BOTTS L.L.P.

13 

14 Christopher W. Kennerly  
15 Attorneys for Plaintiff  
16 FUJITSU LIMITED

## EXHIBIT A



US00RE36769E

**United States Patent**

[19]

[11] E

**Patent Number: Re. 36,769****Ozawa et al.**[45] **Reissued Date of Patent: Jul. 11, 2000**

[54] **CARD TYPE INPUT/OUTPUT INTERFACE  
DEVICE AND ELECTRONIC DEVICE USING  
THE SAME**

[75] Inventors: **Masayuki Ozawa**, Sagamihara;  
**Shigeru Suzuki**, Kawasaki, both of  
Japan

4,858,162 8/1989 Kieffer et al. .  
4,865,561 9/1989 Collier et al. .  
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(List continued on next page.)

[73] Assignee: **Fujitsu Limited**, Kanagawa, Japan

**FOREIGN PATENT DOCUMENTS**

[21] Appl. No.: **08/731,754**

[22] Filed: **Oct. 18, 1996**

**Related U.S. Patent Documents**

Reissue of:

[64] Patent No.: **5,357,091**  
Issued: **Oct. 18, 1994**  
Appl. No.: **07/875,800**  
Filed: **Apr. 30, 1992**

**[30] Foreign Application Priority Data**

Apr. 30, 1991 [JP] Japan ..... 3-124635

[51] Int. Cl.<sup>7</sup> ..... **G06K 19/06**

[52] U.S. Cl. .... **235/380; 235/492; 235/486**

[58] Field of Search ..... **235/492, 380,  
235/382, 382.5, 379, 375, 383, 441, 486**

**[56] References Cited****U.S. PATENT DOCUMENTS**

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0 426 414 A2 5/1991 European Pat. Off. .  
0 490 373 A1 6/1992 European Pat. Off. .  
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64-8492 1/1989 Japan .  
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3-53776 U 5/1991 Japan .  
4-213715 8/1992 Japan .

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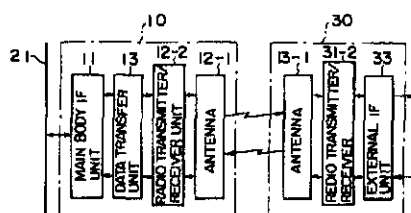
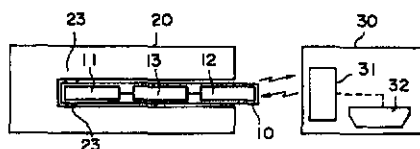
"Understanding How to Apply the Meta Format", Memory Card, p. 36-38, May/Jun. 1991.

*Primary Examiner*—Thien Le

*Attorney, Agent, or Firm*—Helfgott & Karas, PC.

**[57] ABSTRACT**

A card type input/output interface device includes a first connection part for transferring data between a main body of an electronic device and the card type input/output interface device, a second connection part which is coupled to the first connection part and transfers data between an external device and the card type input/output interface device, and a card supporting the first and second connection part. The first connection part is accommodated in the main body when the card type input/output interface device is inserted into a slot provided in the main body.

**51 Claims, 11 Drawing Sheets**



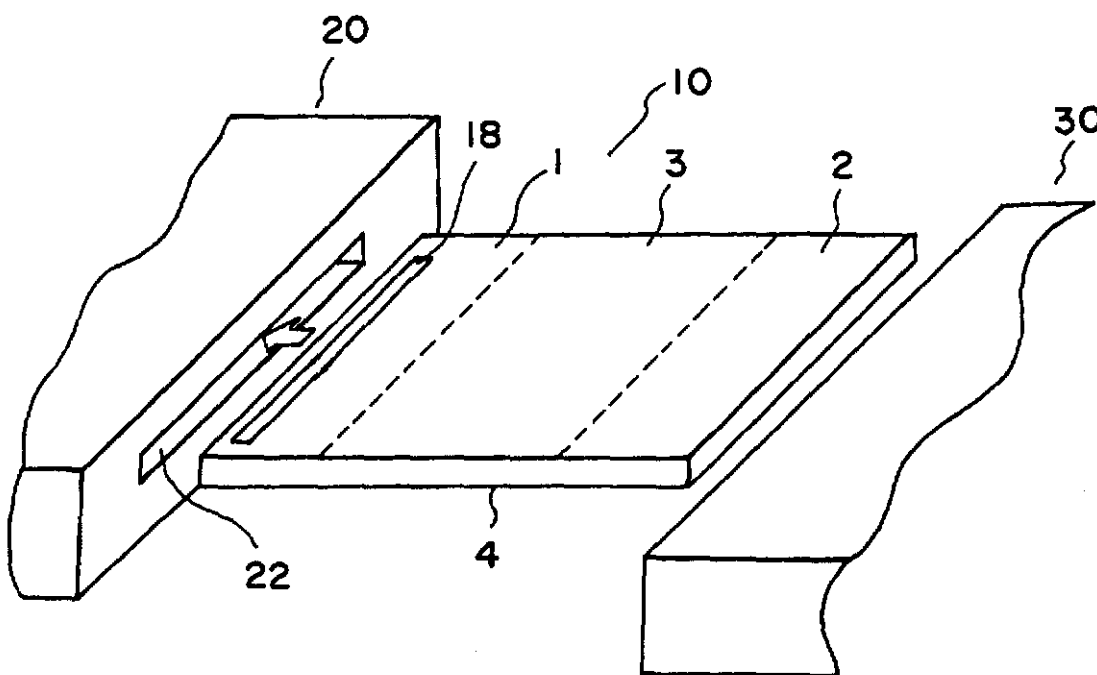
U.S. Patent

Jul. 11, 2000

Sheet 1 of 11

Re. 36,769

FIG. 1



U.S. Patent

Jul. 11, 2000

Sheet 2 of 11

Re. 36,769

FIG. 2A

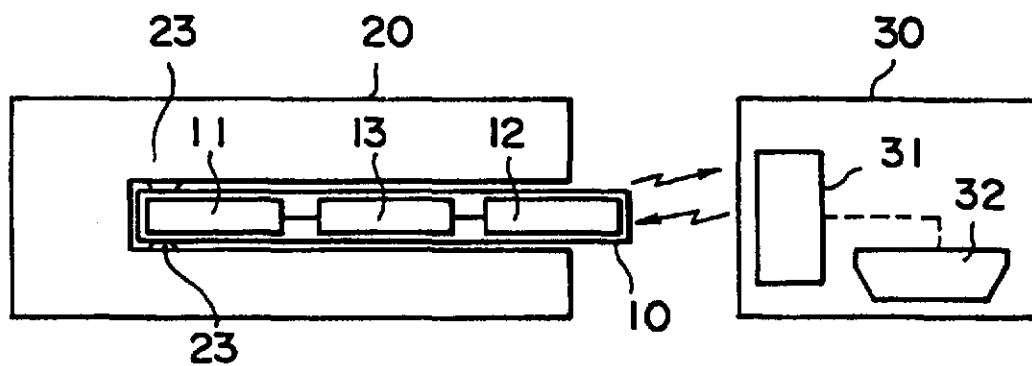


FIG. 2B

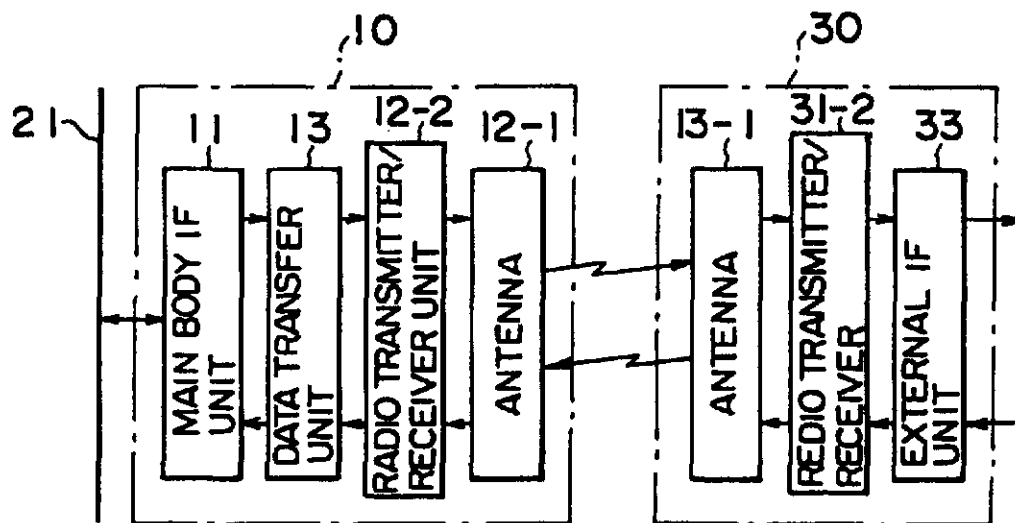


FIG. 3A

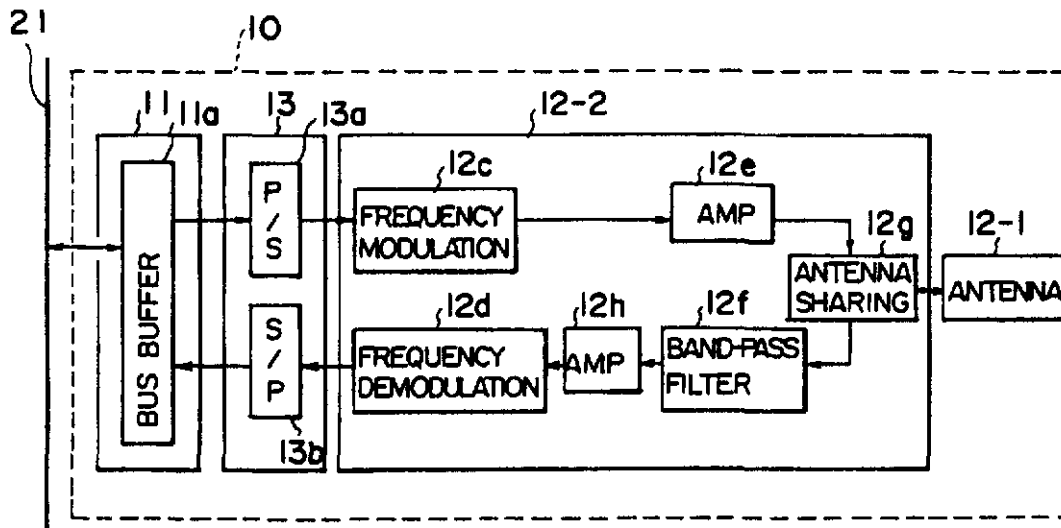
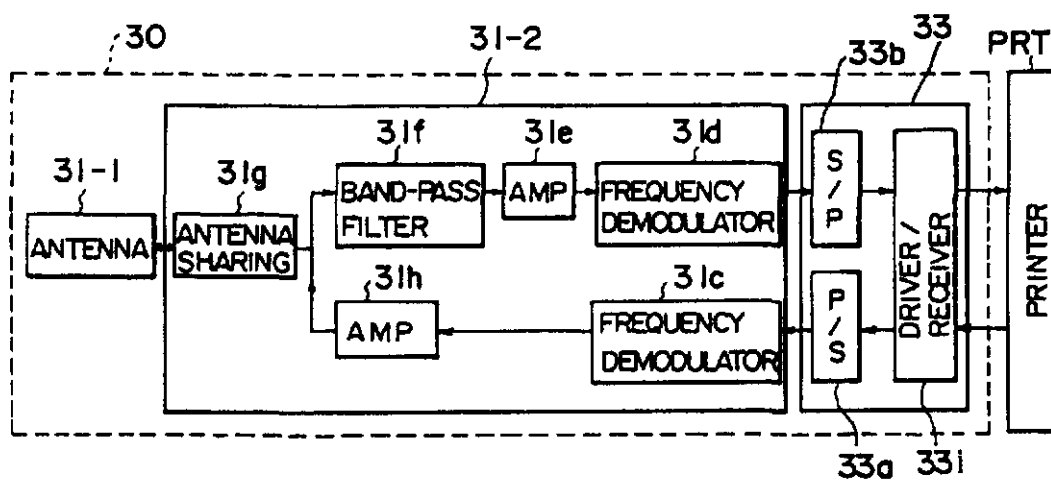


FIG. 3B



U.S. Patent

Jul. 11, 2000

Sheet 4 of 11

Re. 36,769

FIG. 4A

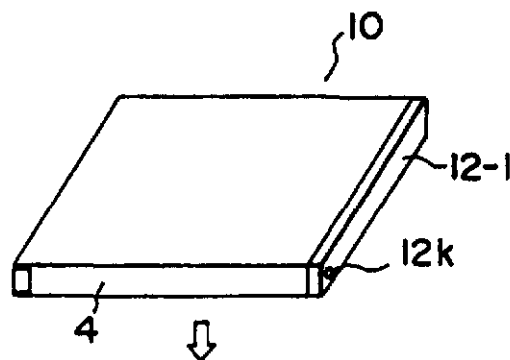


FIG. 4B

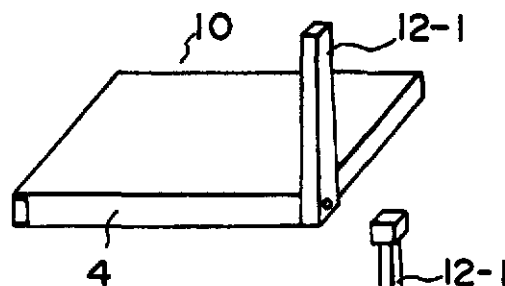


FIG. 4C

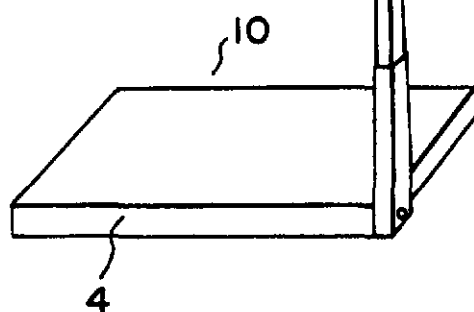


FIG. 4D

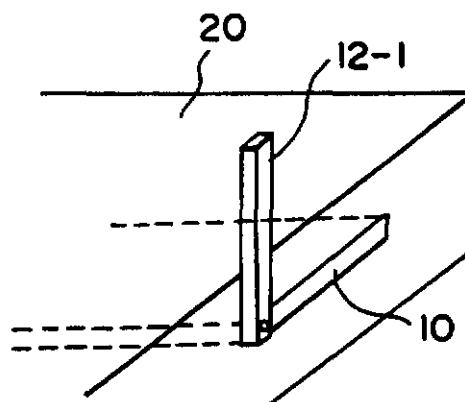


FIG. 5

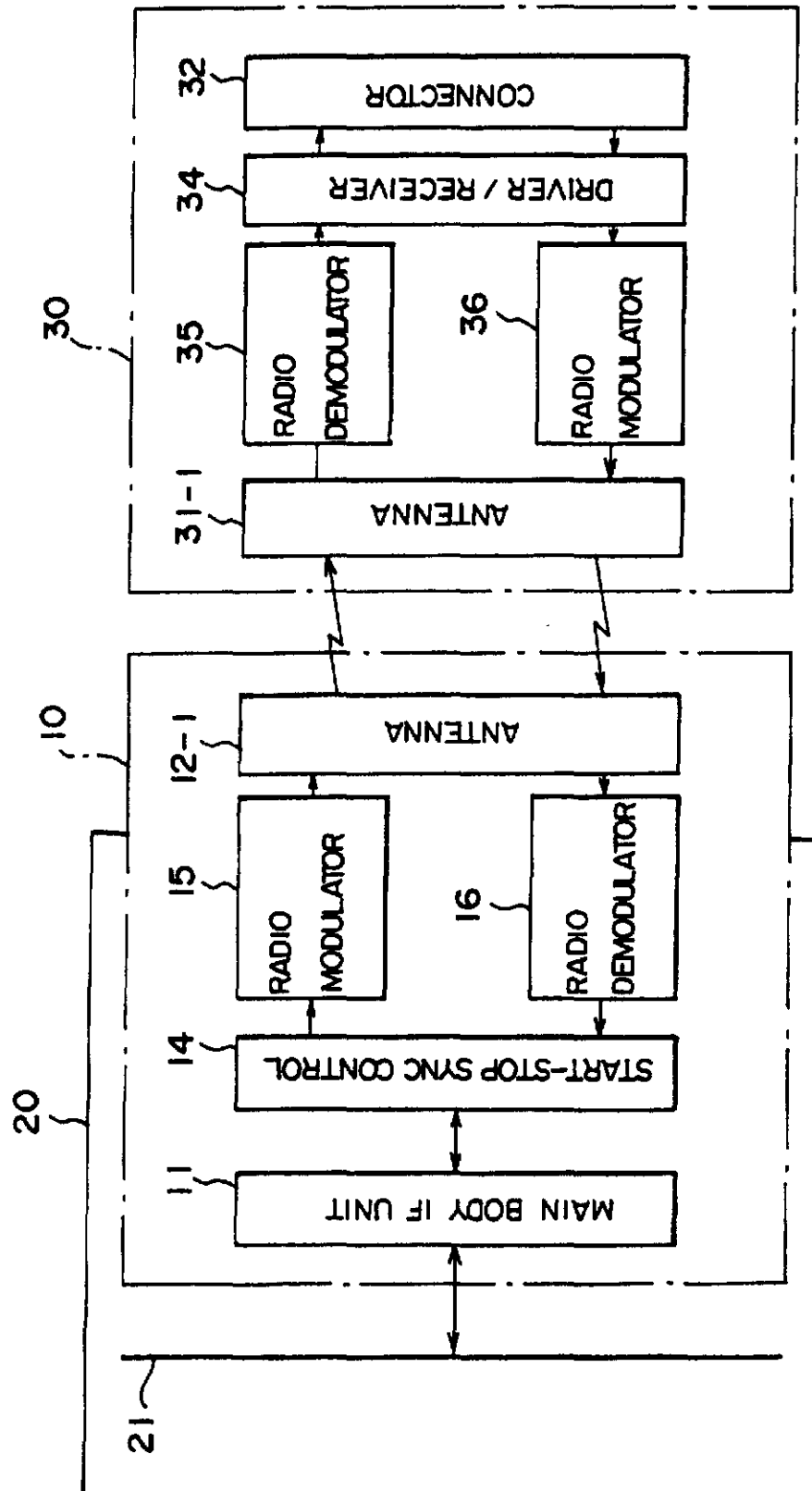


FIG. 6A

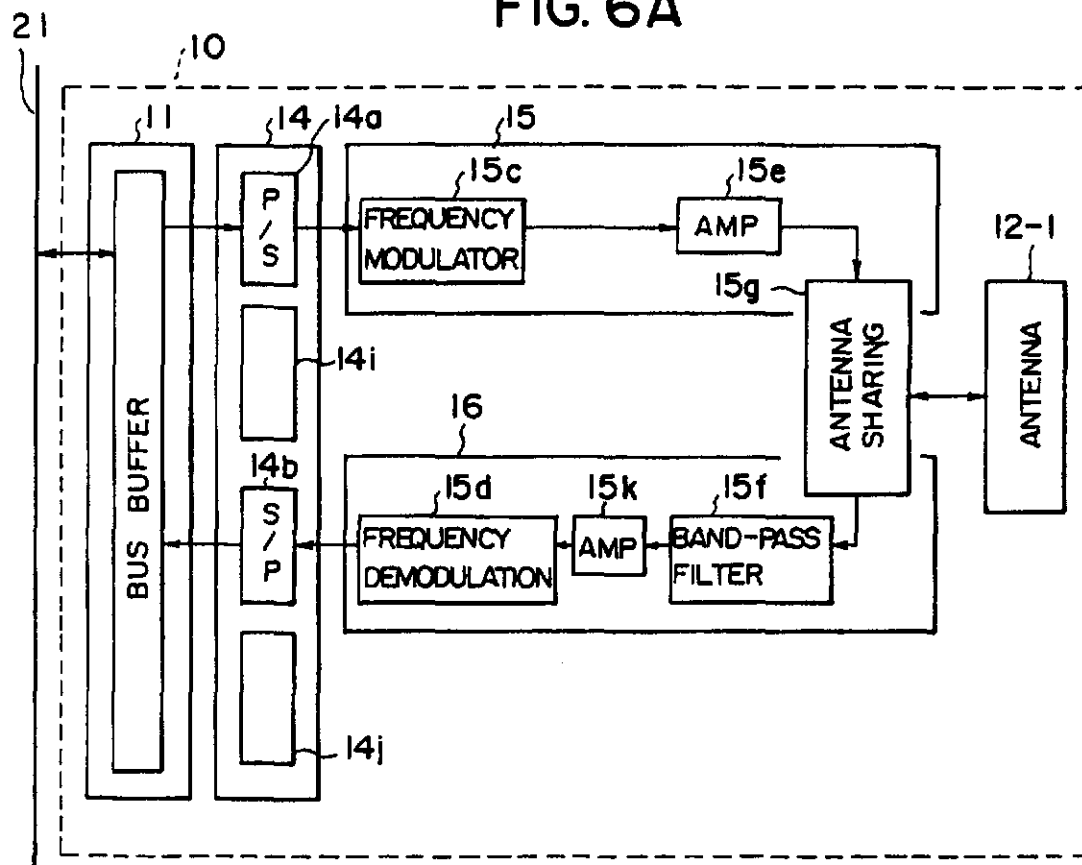
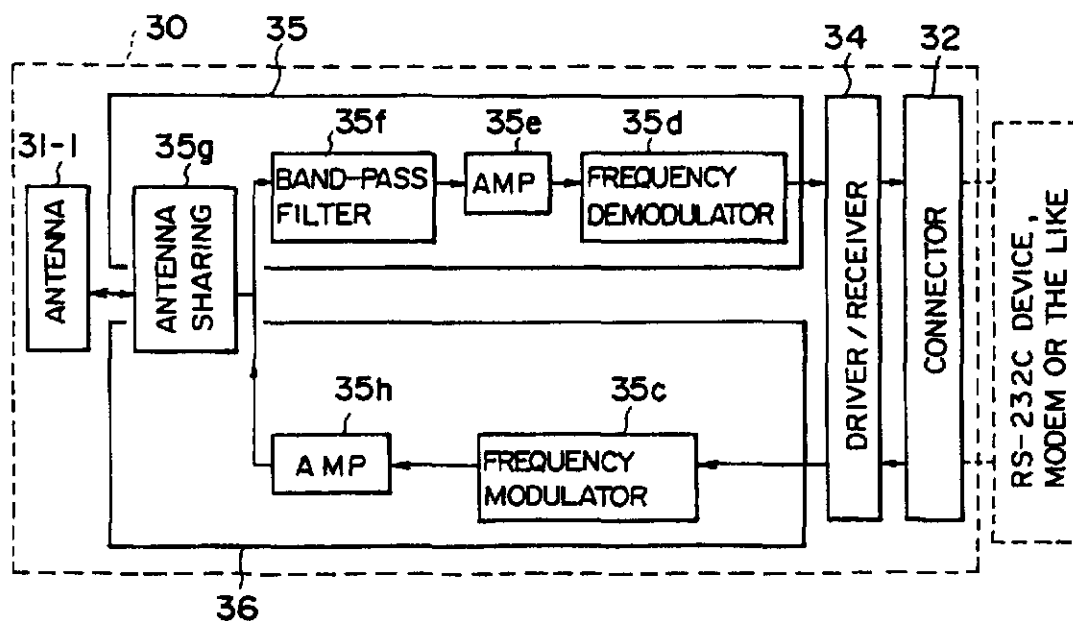


FIG. 6B





U.S. Patent

Jul. 11, 2000

Sheet 7 of 11

Re. 36,769

FIG. 7A

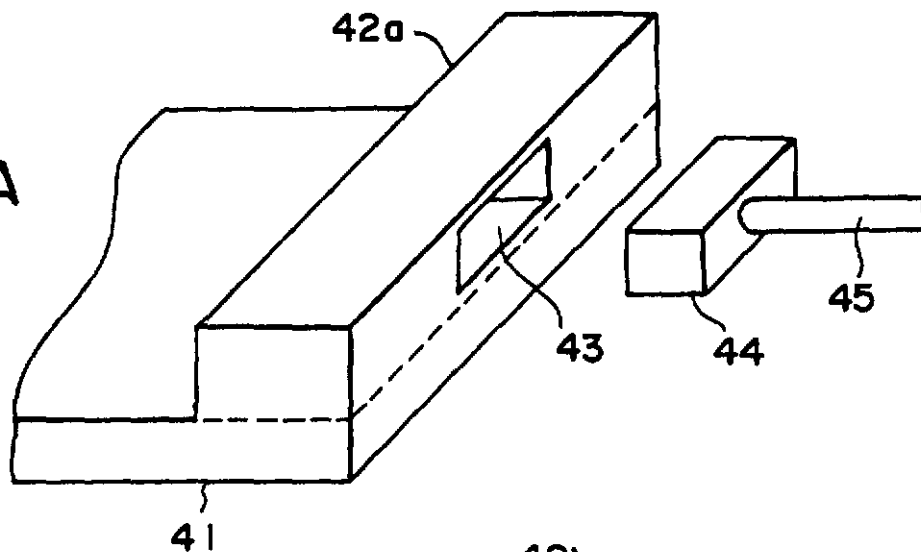


FIG. 7B

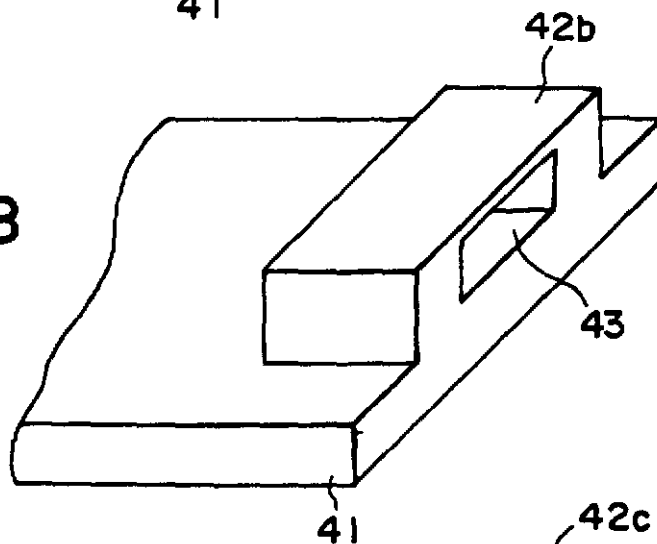


FIG. 7C

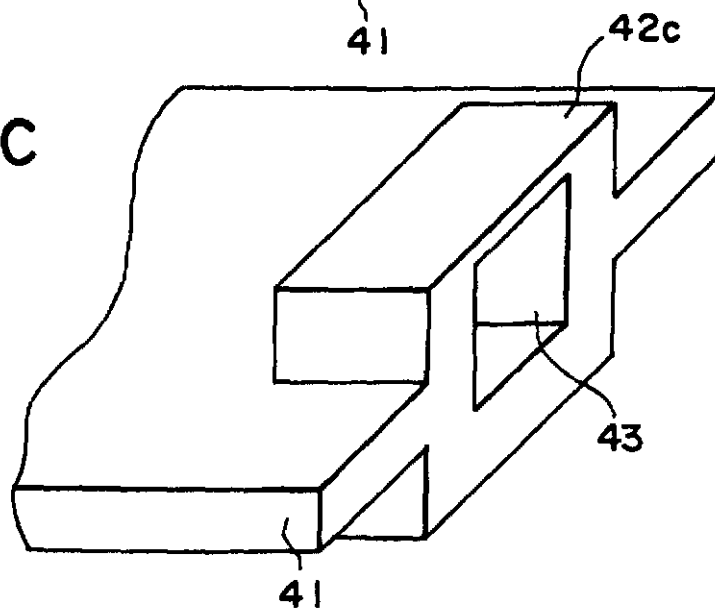


FIG. 8

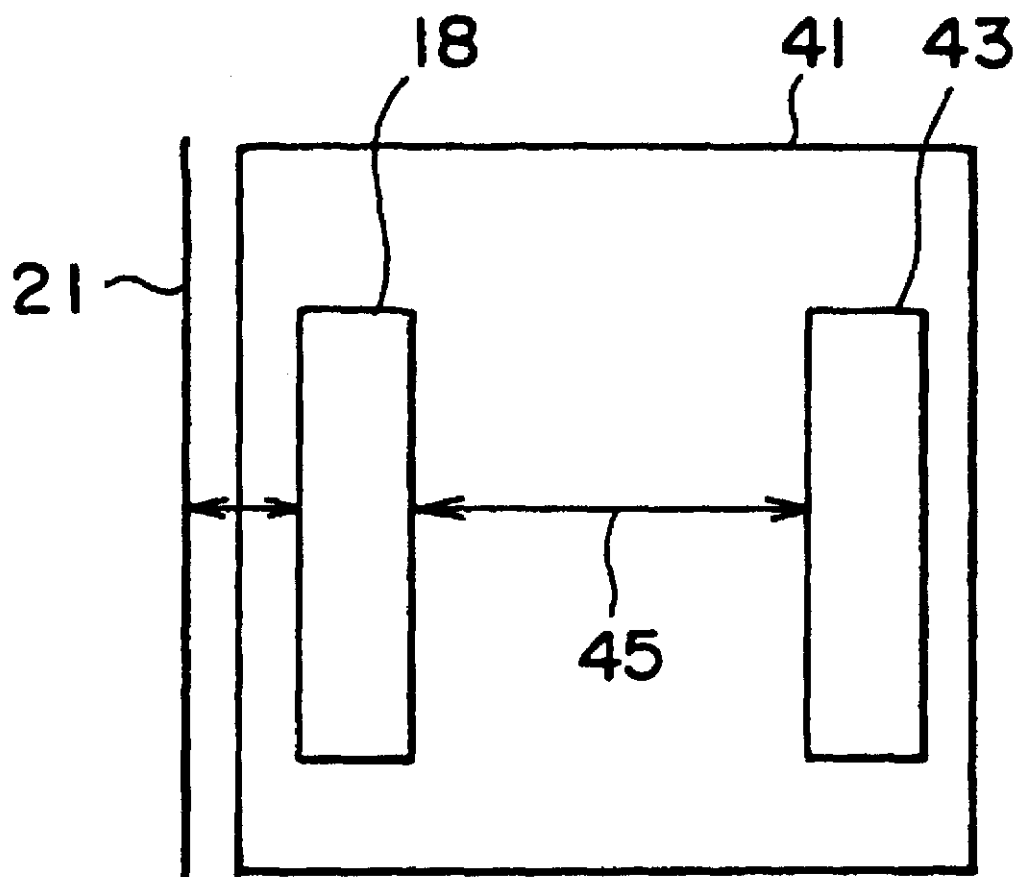


FIG. 9A

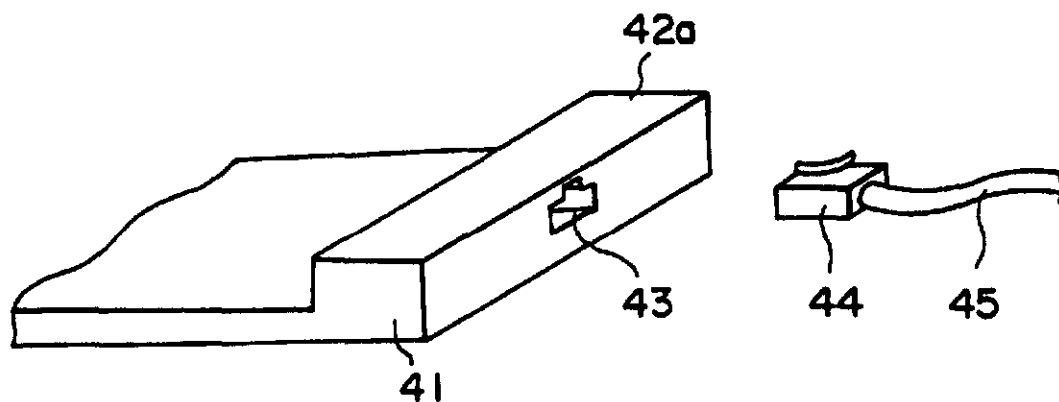


FIG. 9B

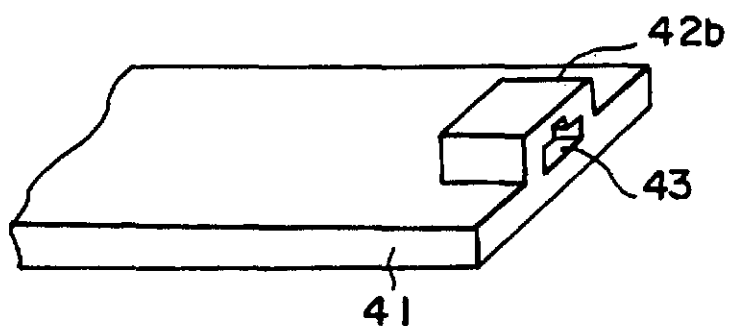
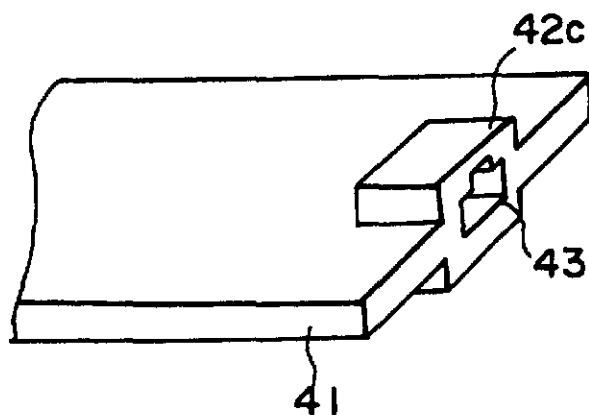


FIG. 9C



U.S. Patent

Jul. 11, 2000

Sheet 10 of 11

Re. 36,769

FIG. 10A

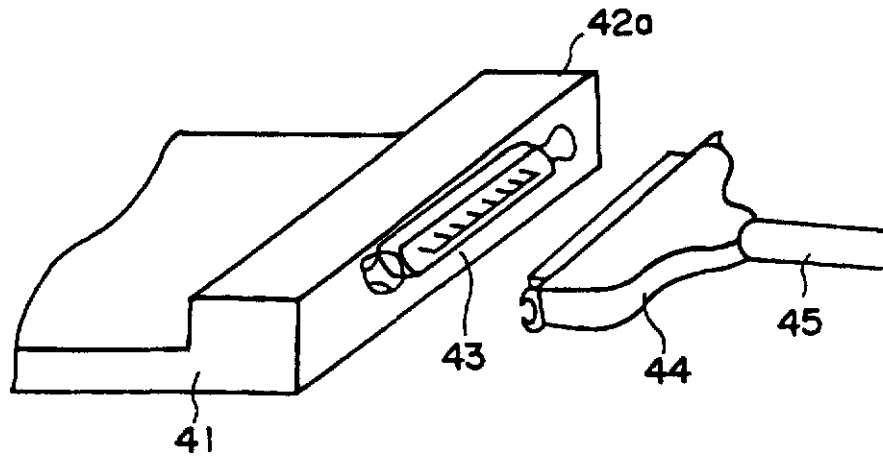


FIG. 10B

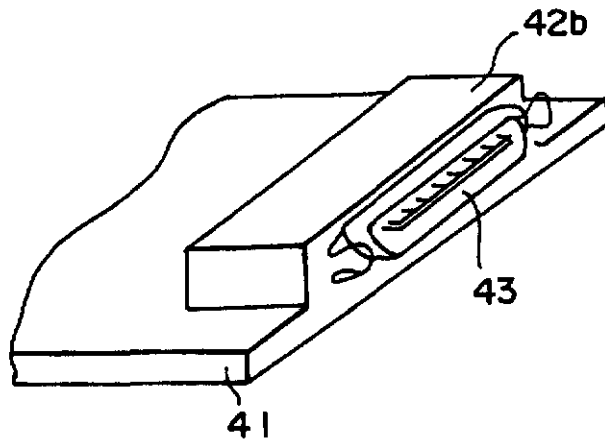


FIG. 10C

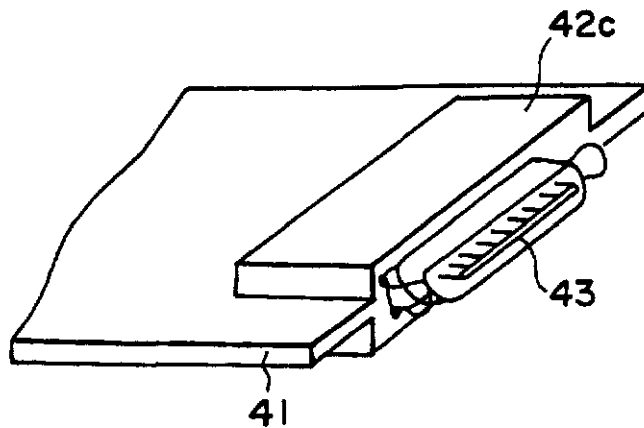


FIG. 11A

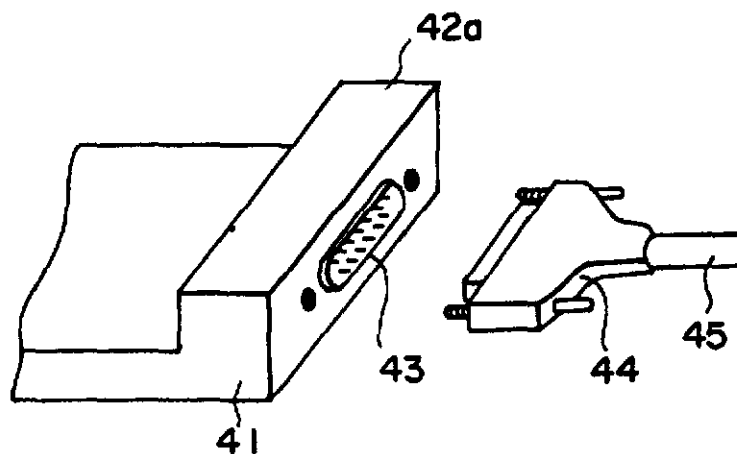


FIG. 11B

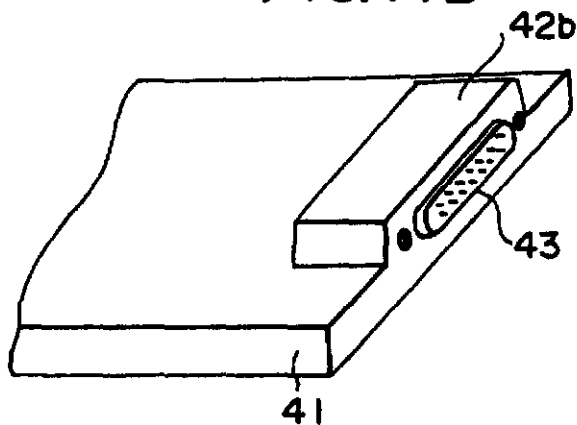
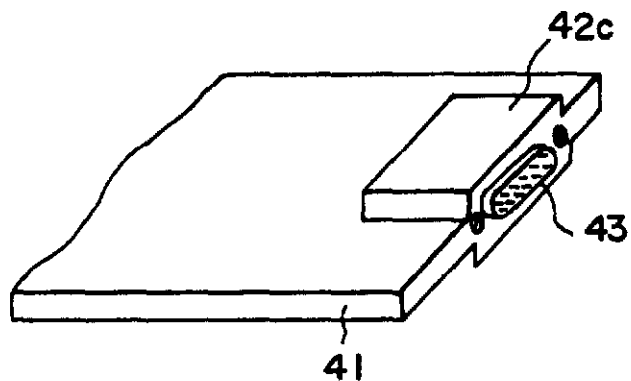


FIG. 11C



Re. 36,769

1

# CARD TYPE INPUT/OUTPUT INTERFACE DEVICE AND ELECTRONIC DEVICE USING THE SAME

Matter enclosed in heavy brackets [ ] appears in the original patent but forms no part of this reissue specification; matter printed in italics indicates the additions made by reissue.

## BACKGROUND OF THE INVENTION

### 1. Field of the Invention

The present invention generally relates to a card type input/output interface device, which couples a main body of an electronic device system and an external or peripheral device with each other.

### 2. Description of the Prior Art

As is well known, advances in the semiconductor technology bring about down-sizing of various electronic device systems. An IC (Integrated Circuit) memory card was created under the above circumstances. An IC memory card, which functions as an external storage device, is inserted into a slot of the main body of an electronic device system. Normally, a small-scale electronic device system, such as a laptop computer, has a connector for connecting it to external devices such as a printing machine and a modem. There is currently a need for further down-sizing and for cost reducing of such electronic device systems.

An IC memory card comprises integrated volatile memories and/or integrated nonvolatile memories mounted on a card. Examples of the integrated volatile memories are an SRAM (Static Random Access Memory) or a DRAM (Dynamic Random Access Memory), and examples of the integrated non-volatile memory are a mask ROM (Read Only Memory) and an EEPROM (Electrically Erasable Programmable Read Only Memory). If 12 IC memories, each having a storage capacity of 64 kbits, are mounted on a card, an IC memory card having a storage capacity of 768 kbits will be formed. Hence, it is easy to form an IC memory card having a storage capacity of a few megabits to tens of megabits by mounting, on the card, a plurality of IC memories, each memory having a storage capacity of few megabits on a chip. An IC card has been practically used in which a processor is formed integrally with IC memories. Such an IC card has the function of processing data. This IC card is also called a smart card or an intelligent card.

The external dimensions of IC memory cards or IC cards are 85.6×54.0×3.3 [mm], for example. These cards are inserted into slots of electronic device systems, such as word processors and personal computers. In the state where the cards are inserted into the slots, the cards make electric connections with internal buses or registers provided in the electronic device systems. These electric connections can be made by means of direct contact structures or non-contact structures.

Nowadays, small-scale electronic device systems use IC memory cards as replaceable external storage devices. Further, external or peripheral electronic device systems which are not always used together with the main body are electrically connected to the main body via a connector formed on, for example, a sidewall(s) of the main body. The use of the above connector mounted on the sidewall of the main body prevents down-sizing of electronic device systems.

## SUMMARY OF THE INVENTION

It is a general object of the present invention to provide a card type input/output interface device in which the above disadvantages are eliminated.

2

A more specific object of the present invention is to facilitate down-sizing of the main body of an electronic device system by means of a card type input/output interface device, which is inserted into a slot formed in the main body.

The above objects of the present invention are achieved by a card type input/output interface device comprising: first connection means for transferring data between a main body of an electronic device and the card type input/output interface device; second connection means, coupled to the first connection means, for transferring data between an external device and the card type input/output interface device; and a card supporting the first and second connection means. The first connection means is accommodated in the main body when the card type input/output interface device is inserted into a slot provided in the main body.

Another object of the present invention is to provide an electronic device system using the above card type input/output interface device.

This object of the present invention is achieved by an electronic device system comprising: a main body of the electronic device system, the main body comprising a slot; a card type input/output interface device inserted into the slot; and an external device. The card type input/output interface device comprises: first connection means for transferring data between the main body and the card type input/output interface device; second connection means, coupled to the first connection means, for transferring data between an external device and the card type input/output interface device; and a card supporting the first and second connection means, the first connection means being accommodated in the main body when the card type input/output interface device is inserted into the slot provided in the main body. The main body comprises third connection means, coupled to the first connection means, for coupling the main body and the card type input/output interface device with each other. The external device comprises fourth connection means, coupled to the second connection means, for coupling the card type input/output interface device and the external device with each other.

## BRIEF DESCRIPTION OF THE DRAWINGS

Other objects, features and advantages of the present invention will become more apparent from the following detailed description when read in conjunction with the accompanying drawings, in which:

FIG. 1 is a perspective view of a first embodiment of the present invention;

FIGS. 2A and 2B are block diagrams of the first embodiment of the present invention in more detail;

FIG. 3A is a block diagram of a card type input/output interface device shown in FIGS. 2A and 2B;

FIG. 3B is a block diagram of an external device shown in FIGS. 2A and 2B;

FIGS. 4A through 4D are diagrams showing an antenna used in disclosed embodiments of the present invention;

FIG. 5 is a block diagram of a second embodiment of the present invention;

FIG. 6A is a block diagram of the card type input/output interface device used in the second embodiment of the present invention;

FIG. 6B is a block diagram of an external device used in the second embodiment of the present invention;

FIG. 7A is a perspective view of a third embodiment of the present invention;

FIG. 7B is a perspective view of a variation of the structure shown in FIG. 7A;

Re. 36,769

3

FIG. 7C is a perspective view of a variation of the structure shown in FIG. 7B;

FIG. 8 is a block diagram of the card type input/output interface device of the third embodiment of the present invention;

FIGS. 9A through 9C are perspective views of card type input/output interface devices in which 6-pin modular connectors are used;

FIGS. 10A through 10C are perspective views of card type input/output interface devices in which Centro-connectors are used; and

FIGS. 11A through 11C are perspective views of card type input/output interface devices in which RS-232C connectors are used.

#### DESCRIPTION OF THE PREFERRED EMBODIMENTS

Referring to FIG. 1, a card type input/output interface device 10 according to a first embodiment of the present invention comprises a card 4, a first connection part 1, a second connection part 2 and a circuit part 3. The first and second connection parts 1 and 2, and the circuit part 3 are supported by the card 4. The first connection part 1 is located on a first end portion of the card 4, the first end portion being inserted into a slot 22 formed on a sidewall of a main body 20 of an electronic device system. The second connection part 2 is located on a second end portion of the card 4, which is opposite the first connection part 1. The circuit part 3 is interposed between the first connection part 1 and the second connection part 2.

The connection part 1 comprises a connector 18 formed on a single side or both opposing sides of the card 4, as in the case of conventional IC cards. In the state where the interface device 10 has been inserted into the slot 22 of the main body 20, the connector 18 comes into contact with a connector 23 in the slot 22 of the main body 20, as shown in FIG. 2A. Signals are transferred between the main body 20 and the interface device 10 via the connectors 18 and 23.

The connection part 2 comprises a radio transmitter/receiver unit and an antenna. The antenna is, for example, a rot antenna, as will be described in detail. Signals are transferred between the interface card 10 and an external or peripheral device 30 through a radio communications channel. For this purpose, the external device 30 comprises an antenna and a radio transmitter/receiver unit, as will be described later.

The circuit part 3 comprises an antenna and a data transfer unit, as will be described in detail later. It is necessary to place the main body 20 and the external device 30 within service areas of the interface device 10 and the external device 30.

FIGS. 2A and 2B show the configuration of the first embodiment of the present invention in more detail. In FIGS. 2A and 2B, those parts which are the same as those shown in FIG. 1 are given the same reference numerals. A main body interface unit 11, which comprises the connector 18, is formed on the first contact part 1 shown in FIG. 1. An antenna 12-1 and a radio transmitter/receiver unit 12-2 are formed in the second connection part 2 shown in FIG. 1. A data transfer unit 13 is formed in the circuit part 3 shown in FIG. 1.

The aforementioned connector 23, which is electrically connected to a bus of the main body 20, has parts mounted on upper and lower inner surfaces defining the slot 22.

The external device 30, such as a printing machine or a modem, comprises a radio communications part 31 and a

4

connector unit 32. The radio communications part 31 functions to communicate with the interface device 10 via a radio communications channel. The connector unit 32 is provided for connecting the external device 30 to another external device. The radio communications part 31 comprises an antenna 31-1 and a radio transmitter/receiver unit 31-2. The connector unit 32 comprises an external interface unit 33 comprising a connector.

FIG. 3A shows the configuration of the interface device 10 in more detail. The main body interface unit 11 comprises a bus buffer 11a, which is electrically connected to the bus 21 via the connectors 18 and 23 (these connectors are omitted in FIG. 3A for the sake of simplicity). The data transfer unit 13 comprises a parallel-to-serial (P/S) converter 13a and a serial-to-parallel (S/P) converter 13b. Data from the bus buffer 11a is transferred in parallel form. The P/S converter 13a converts parallel data from the bus buffer 11a into serial data. The S/P converter 13b converts serial data from the radio transmitter/receiver unit 12-2.

The radio transmitter/receiver unit 12-2 comprises a frequency modulator 12c, a frequency demodulator 12d, amplifiers 12e and 12h, a band-pass filter 12f and an antenna sharing device 12g. The frequency modulator 12c modulates digital data into a frequency signal transmittable via a radio communications channel. The frequency demodulator 12d demodulates a frequency signal received from a radio communications channel into digital data. The amplifier 12e amplifies the frequency signal from the frequency modulator 12c, and the amplifier 12h amplifies the frequency signal received. The bandpass filter 12f extracts signal components in a reception frequency band from the received frequency signal. The amplifiers 12e and 12f are coupled to the antenna 12-1 via the antenna sharing device 12g.

FIG. 3B shows the configuration of the external device 30. The radio transmitter/receiver unit 31-2 comprises an antenna sharing device 31g, a band-pass filter 31f, amplifiers 31e and 31h, a frequency demodulator 31d and a frequency modulator 31c. These structural elements of the radio transmitter/receiver unit 31-2 are the same as those in the radio transmitter/receiver unit 12-2 of the interface device 10. The external interface unit 33 of the external device 30 comprises an S/P converter 33b, a P/S converter 33a and a driver/receiver 33i. The driver/receiver 33i outputs drive signals to a printer PRT, and receives signals from the printer PRT.

The modulation type used in the first embodiment is, for example, a sub-carrier NISK method, or a FSK method. It is possible to selectively use a plurality of radio communications channels as in the case of automobile telephones and portable telephones. For example, if there is much noise in a radio communications channel, another radio communications channel will be selected. The above switching can be made if a radio communications channel interferes another device. An arbitrary frequency of the radio channel can be used. In Japan, it is preferable that the frequency of the radio channel be within a 380 MHz/250 MHz range.

FIGS. 4A through 4D show the antenna 12-1. The antenna 12-1 shown in FIG. 4A is a rod antenna, which is rotatably supported by a screw member 12k. That is, the screw member 12k is fastened to the sidewall of the card 4 so that the rod antenna 12-1 rotates around the screw member 12k. The rod antenna 12-1 is contractible and expandable. FIG. 4A shows the contracted state of the rod antenna 12-1. When the rod antenna 12-1 is used, it is made stand upright, as shown in FIG. 4B. Then, the rod antenna 12-1 is expanded so that it has an elongated length, as shown in FIG. 4C. FIG.



Re. 36,769

5

4D shows the state where the interface device 10 has been inserted into the slot 22 of the main body 20. The antenna 12-1 is not limited to the rod type, but instead another type of antenna can be used. For example, the antenna 12-1 can be a conductive pattern formed on the card.

When a processor (not shown) in the main body 20 or the like specifies the external device 30 and generates an instruction to transfer data, the data transfer unit 13 of the interface device 10 receives parallel data on the bus 21 via the main body interface unit 11, and converts the parallel data into serial data. The radio transmitter/receiver unit 12-2 modulates the serial data in the predetermined modulation method, and transmits the frequency signal via the antenna 12-1. The external device receives the frequency signal via the antenna 31-1, and demodulates it into serial data. The serial data is converted into parallel data by the external interface unit 33. Further, the external interface unit 33 generates the drive signals from the parallel data, and applies the signals to the printer PRT.

When data is transferred from the external device 30 to the main body 20, serial data applied to the radio transmitter/receiver unit 31-2 via the external interface unit 33 is modulated and transmitted via the antenna 31-1. The radio transmitter/receiver unit 12-2 of the interface device 10 receives the frequency signal from the external device 30 via the antenna 12-1. The serial data output from the radio transmitter/receiver unit 12-2 is converted into parallel data by the data transfer unit 13, and output to the bus 21 via the main body interface unit 11.

The external device 30 has the connector unit 32. Thus, it is possible to transfer data received from the interface device 10 to another external device via the connector unit 32 and transfer data received from another external device to the interface device 10. The connector unit 32 conforms to, for example, the RS-232C interface. It should be noted that the main body 10 can be connected to an external device via the interface device 10 and the external device 30 as if the main body 10 is connected thereto through the connector attached to the main body 10. Hence, it becomes possible to omit the conventional connector(s) provided in the main body 20.

FIG. 5 shows the configuration of a second embodiment of the present invention. In FIG. 5, those parts which are the same as those shown in the previously described figures are given the same reference numerals. The second embodiment of the present invention uses a start-stop system communications method. The radio transmitter/receiver unit 12-2 and the data transfer unit 13 of the interface device 10 shown in FIG. 2B are replaced by a start-stop synchronization controller 14, a radio modulator 15 and a radio demodulator 16. The radio transmitter/receiver unit 31-2 and the external interface unit 33 of the external device 30 shown in FIG. 2B are replaced by a connector 32, a driver/receiver 34, a radio demodulator 35 and a radio modulator 36.

FIG. 6A shows the configuration of the interface device 10 according to the second embodiment of the present invention. The start-stop synchronization control unit 14 comprises a P/S converter 14a, a S/P converter 14b, a parity generator 14i, and a parity checker 14j. The parity generator 14i generates a parity bit in the start-stop synchronization and adds it to data to be transmitted. The parity checker 14j checks the parity check in data received from the external device 30. The radio modulator 15 comprises a frequency modulator 15c, an amplifier 15e and an antenna sharing device 15g. The radio demodulator 16 comprises the antenna sharing device 15g, a band-pass filter 15f, an amplifier 15k and a frequency demodulator 15d.

6

FIG. 6B shows the configuration of the interface device 30 according to the second embodiment 35 of the present invention. The radio demodulator comprises an antenna sharing device 35g, a band-pass filter 35f, an amplifier 35e and a frequency demodulator 35d. The radio modulator 36 comprises the antenna sharing device 35g, an amplifier 35k.

The interface device 10 is inserted into the slot 22 of the main body 20 in the same manner as the interface device 10 of the first embodiment of the present invention. The interface device 10 is connected to the bus 21 via the main body interface unit 11. The external device 30 is positioned within the service areas of the interface device 10 and the external device 30. Another external device, such as a modem, is connected to the external device 30 via the connector 32.

The processor in the main body 20 or the like specifies the external device 30 and generates an instruction to transfer data. Then the start-stop synchronization control unit 14 receives data via the bus 21 and main interface unit 11, and converts it into serial start-stop system data. The radio modulator 15 modulates the data from the control unit 14, and transmits a frequency signal via the antenna 21-1.

The radio demodulator 35 of the external device 30 demodulates the frequency signal received via the antenna 31-1. Demodulated start-stop system data is applied to the connector 32 through the driver/receiver 34. In this manner, an external device in conformity to a predetermined interface, such as the RS-232C interface, can be connected to the main body 20 as in the case of a main body having a connector for external connection.

A description will now be given of a third embodiment of the present invention. A card type input/output interface device 41 has a projection 42a formed in the aforementioned second connection part 2. The projection 42a upwardly projects from a surface of the card. As shown in FIG. 8, the aforementioned connector 18 is formed in the first connection part opposite the projection 42a. The width of the projection 42a in the direction perpendicular to the direction in which the interface device 41 is inserted into the slot 22 of the main body 20 is the same as that of the card 4. A connector 43 is formed in the projection unit 42a so that it accommodates a cable connector 44 of a cable 45 in the direction in which the interface device 41 is inserted into the slot of the main body 20. As shown in FIG. 8, the connector 43 is electrically connected to the connector 18 through a conductive line formed in the card. The projection 42a is located outside the main body 20 when the interface device 41 has been inserted into the main body 20. It is also possible to design the projection 42a so that it is accommodated in the main body 20.

FIG. 7B shows a first variation of the interface device 41, which has a projection 42b. As shown in FIG. 7B, the width of the projection 42b is smaller than that of the card. This means that the projection 42b has a width sufficient to provide the connector 43. It is possible to select the dimensions of the projection 42b so that the projection 42b is housed in the main body 20 when it is inserted into the slot 22.

FIG. 7C shows a second variation of the interface device 41 shown in FIG. 7B. The interface device 41 shown in FIG. 7C has a projection 42 which projects from both opposing surfaces of the card. A person can grip the projection 42c from both sides thereof. Hence, it is easy to insert the interface device 41 into the slot 22 and detach it therefrom.

FIGS. 9A, 9B and 9C show the card type input/output interface devices 41 shown in FIGS. 7A, 7B and 7C in which the connectors 43 and 44 are formed with 6-pin modular



Re. 36,769

7

connectors. It is possible to form the modular 44 so that it is 7 mm x 7 mm in length and breadth. When the card is 3 mm thick, the projection 42a is designed to have a thickness of approximately 6 mm. Thus, the total thickness is equal to approximately 9 mm-10 mm. This thickness does not degrade the performance of the IC cards.

FIGS. 10A, 10B and 10C show the card type input/output interface devices 41 shown in FIGS. 7A, 7B and 7C in which the connectors 43 and 44 are formed with 6-pin Centronics connectors which conform to the Centronics.

FIGS. 11A, 11B and 11C show the card type input/output interface devices 41 shown in FIGS. 7A, 7B and 7C in which the connectors 43 and 44 are formed with RS-232C connectors which conform to the RS-232C interface.

According to the present invention, the card type input/output interface device that is inserted into the slot of the electronic device systems can be provided. The interface device of the present invention can facilitate down-sizing and cost reducing of the electronic device systems because connectors for external connection can be omitted. Further, it is easy to connect the electronic device systems to various types of interface connectors by providing various types of the interface devices as shown in FIGS. 9A-9C through 11A-11C. This increases the functions of the main body. Furthermore, the use of electronic elements as shown in FIGS. 3A, 3B, 6A and 6B provides various types of interface between the main body and external devices. Particularly, the use of radio transmitter/receiver units can provide the card type input/output interface devices having a thickness almost the same as the thicknesses of conventional IC memory cards and IC cards. It should be noted that the card type input/output interface device is open to the external environment while the conventional cards operate in the closed environment.

In the embodiments described in the foregoing, connections between the main body 20 and the interface device 10 are made by means of the direct-contact structure. Alternatively, it is possible to make these connections by means of a non-contact structure by using, for example, a radio transmitter/receiver unit as in the case of making connections between the interface device 10 and the external device 30.

The present invention is not limited to the specifically disclosed embodiments and variations and modifications may be made without departing from the scope of the present invention.

What is claimed is:

1. A card type input/output interface device comprising:  
first data transmission means for transferring data between a main body of an electronic device and the card type input/output interface device;  
second data transmission means, coupled to said first data transmission means, for transferring data between an external device and the card type input/output interface device; and  
a card supporting said first and second data transmission means,  
said first data transmission means being accommodated in said main body when the card type input/output interface device is inserted into a slot provided in said main body of the electronic device so as to transfer data between said card type input/output interface device and said electronic device.]

2. A card type input/output interface device as claimed in claim [1] 38, wherein said second data [transmission means] interface unit comprises radio transmitter/receiver means for

8

transferring the data between said external device and the card type input/output interface device through a radio communications channel.

3. A card type input/output interface device as claimed in claim 2, and further comprising data transfer circuit means, interposed between said first and second data transmission means, for providing an interface of data transfer between said first data transmission means and said radio transmitter/receiver means.]

4. A card type input/output interface device as claimed in claim 2, wherein said second data [transmission means] interface unit comprises an antenna coupled to said radio transmitter/receiver means.

5. A card type input/output interface device as claimed in claim 4, wherein said antenna is a rod type antenna.

6. A card type input/output interface device as claimed in claim 4, wherein said antenna is a rod type antenna which is contractible and expandable.

7. A card type input/output interface device as claimed in claim 4, wherein said antenna is a rod type antenna which is contractible and expandable and which is rotatably supported to said card.

8. A card type input/output interface device as claimed in claim 4, wherein said antenna is an edge portion of said card.

9. A card type input/output interface device as claimed in claim [1] 38, wherein:

said card has a projection in which said second data [transmission means] interface unit is provided;

said first data [transmission means] interface unit is located in a first end portion of said card and said second data [transmission means] interface unit is located in a second end portion opposite said first end portion; and

a thickness of said second end portion of said card including said projection is greater than a thickness of said first end portion of said card.

10. A card type input/output interface device as claimed in claim 9, wherein said projection upwardly projects from a surface of said card.

11. A card type input/output interface device as claimed in claim 9, wherein said projection projects upwardly and downwardly projects from opposing surfaces of said card.

12. A card type input/output interface device as claimed in claim 9, wherein:

said card has a first width in said first end portion;

said projection has a second width in said second end portion; and

said first width is equal to said second width.

13. A card type input/output interface device as claimed in claim 9, wherein:

said card has a first width in said first end portion;

said projection has a second width in said second end portion; and

said second width is smaller than said first width.

14. A card type input/output interface device as claimed in claim 9, wherein said second data [transmission means] interface unit comprises a connector formed in said projection for electrically connecting the card type input/output interface device to said external device.

15. A card type input/output interface device as claimed in claim 14, wherein said connector is a pin modular connector.

16. A card type input/output interface device as claimed in claim 14, wherein said connector is a Centro-connector.

17. A card type input/output interface device as claimed in claim 14, wherein said connector is an RS-232C connector.

18. A card type input/output interface device as claimed in claim [1] 38, wherein said first data [transmission means]

Re. 36,769

9

interface unit comprises a connector for electrically connecting said [the] card type input/output interface device to said electronic device.

[19. An electronic device system comprising:

a main body of an electronic device, said main body comprising a slot;

a card type input/output interface device operable to be inserted into said slot; and

an external device,

wherein said card type input/output interface device comprises:

first data transmission means for transferring data between the main body and the card type input/output interface device;

second data transmission means, coupled to said first data transmission means, for transferring data between said external device and said card type input/output interface device; and

a card supporting said first and second data transmission means,

said first data transmission means being accommodated in said main body when said card type input/output interface device is inserted into said slot provided in the main body so as to transfer data between said external device and said card type input/output device and said electronic device, and wherein:

the main body comprises third data transmission means, coupled to said first data transmission means, for coupling the main body and said card type input/output interface device with each other and transferring data therebetween; and

said external device comprises fourth data transmission means, coupled to said second data transmission means, for coupling said card type input/output interface device and said external device with each other and transferring data therebetween.]

20. An electronic [device] system as claimed in claim [19] 39, wherein:

said second data [transmission means] interface unit comprises first radio transmitter/receiver means for transferring the data between said external device and said card type input/output interface device through a radio communications channel; and

said fourth data transmission means comprises second radio transmission/receiver means for transferring the data between said external device and said card type input/output interface device through said radio communications channel].

[21. An electronic device system as claimed in claim 19, wherein said card type input/output interface device further comprises data transfer circuit means, interposed between said first and second data transmission means, for providing an interface of data transfer between said first data interface unit and said first radio transmitter/receiver means.]

22. An electronic [device] system as claimed in claim 20, wherein:

said second data [transmission means] interface unit comprises a first antenna coupled to said first radio transmitter/receiver means; and

said fourth data transmission means comprises a second antenna coupled to said second radio transmitter/receiver means].

23. An electronic [device] system as claimed in claim 22, wherein said first antenna is a rod type antenna.

24. An electronic [device] system as claimed in claim 22, wherein said first antenna is a rod type antenna which is contractible and expandable.

10

25. An electronic [device] system as claimed in claim 22, wherein said first antenna is a rod type antenna which is contractible and expandable and which is rotatably supported to said card.

26. An electronic [device] system as claimed in claim 22, wherein said first antenna is an edge portion of said card.

27. An electronic [device] system as claimed in claim [19] 39, wherein:

said card has a projection in which said second data [transmission means] interface unit is provided;

said first data [transmission means] interface unit is located in a first end portion of said card and said second [connection means] data interface unit is located in a second end portion opposite said first end portion; and

a thickness of said second end portion of said card including said projection is greater than a thickness of said first end portion of said card.

28. An electronic [device] system as claimed in claim 27, wherein said projection upwardly projects from a surface of the card.

29. An electronic [device] system as claimed in claim 27, wherein said projection projects upwardly and downwardly [projects] from opposing surfaces of said card.

30. An electronic [device] system as claimed in claim 27, wherein:

said card has a first width in said first end portion;

said projection has a second width in said second end portion; and

said first width is equal to said second width.

31. An electronic [device] system as claimed in claim 27, wherein:

said card has a first width in said first end portion;

said projection has a second width in said second end portion; and

said second width is smaller than said first width.

32. An electronic [device] system as claimed in claim 27, wherein said second data [transmission means] interface unit comprises a connector formed in said projection for electrically connecting said card type input/output interface device to said external device.

33. An electronic [device] system as claimed in claim 32, wherein said connector is a pin modular connector.

34. An electronic [device] system as claimed in claim 32, wherein said connector is a Centro-connector.

35. An electronic [device] system as claimed in claim 32, wherein said connector is an RS-232C connector.

36. An electronic [device] system as claimed in claim [19] 39, wherein said first data [transmission means] interface unit comprises a connector for electrically connecting said card type input/output interface device to [said] a main body of the electronic device.

37. An electronic [device] system as claimed in claim 20, wherein said external device comprises [fifth] a third data [transmission means] interface unit, coupled to [said] a second radio transmitter/receiver means, for coupling said external device to another external device and transferring data therebetween.

38. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, to be inserted into a slot provided in the electronic device;

a first data interface unit, provided on one end of the card, for coupling to the electronic device to transfer input

Re. 36,769

11

information to the electronic device and output information from the electronic device when the card is inserted into the slot;

a second data interface unit, provided on an opposing end of the card, for coupling to the external device to transfer the output information to the external device and the input information from the external device; and  
a data transfer circuit, incorporated with the card, in response to the input information being received by the second data interface unit, for transferring the input information to the first data interface unit and, in response to the output information being received by the first data interface unit, for transferring the output information to the second data interface unit.

39. An electronic system, comprising:

an electronic device, provided with a slot thereof;  
an external device providing a peripheral function for the electronic device;

a card, inserted into the slot of the electronic device, for coupling the electronic device to the external device;  
a first data interface unit, provided on one end of the card, for coupling to the electronic device to transfer input information to the electronic device and output information from the electronic device;

a second data interface unit, provided on an opposing end of the card, for coupling to the external device to transfer the output information to the external device and the input information from the external device; and  
a data transfer circuit, incorporated with the card, in response to the input information being received by the second data interface unit, for transferring the input information to the first data interface unit and, in response to the output information being received by the first data interface unit, for transferring the output information to the second data interface unit.

40. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, to be inserted into a slot provided in the electronic device, provided with a first end portion and a second end portion opposite to the first end portion;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the card is inserted into the slot; and

a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device.

41. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, to be inserted into a slot provided in the electronic device;

a data connector for transferring input information to the electronic device and output information from the electronic device when the card is inserted into the slot;

a wireless data transmitter/receiver for transmitting the output information to the external device and for receiving the input information from the external device via a wireless communication channel; and

a data transfer circuit, in response to receiving the input information by the wireless data transmitter/receiver,

12

for transferring the input information to the data connector and, in response to receiving the output information by the data connector, for transferring the output information to the wireless data transmitter/receiver,

wherein the data connector, the wireless data transmitter/receiver and the data transfer circuit are incorporated with the card.

42. A card type input/output interface device according to claim 41, wherein the wireless data transmitter/receiver transmits the output information to the external device and receives the input information from the external device via a radio communication channel.

43. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, to be inserted into a slot provided in the electronic device;

a converter for receiving a parallel bit digital information from the electronic device and for converting the parallel bit digital information into a serial bit digital information when the card is inserted into the slot; and  
a data transfer circuit for transferring the serial bit digital information from the converter to the external device, wherein the converter and the data transfer circuit are incorporated with the card.

44. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, provided with a first end portion and a second end portion, opposite to the first end portion, having a thickness greater than a thickness of the first end portion;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the first end portion of the card is inserted into a slot provided in the external wall in the body of the electronic device; and  
a second data connector, provided on the second end portion, for coupling the data transfer circuit to the external device.

45. A system, to be operatively connected to an electronic device, comprising:

an external device providing a peripheral function for the electronic device;

a card, electrically connected to the external device to be inserted into a slot provided in the electronic device;

a first data interface unit for transmitting input information to the electronic device and for receiving output information from the electronic device when the card interface is inserted into the slot;

a second data interface unit for transmitting the output information to the external device and for receiving the input information from the external device; and

a data transfer circuit, in response to receiving the input information by the second data interface unit, for transferring the input information to the first data interface unit and, in response to receiving the output information by the first data interface unit, for transferring the output information to the second data interface unit,

wherein the first data interface unit, the second interface unit and the data transfer circuit are incorporated with card.



Re. 36,769

13

46. A system, to be operatively connected to an electronic device, comprising:

an external device providing a peripheral function for the electronic device;

a card, provided with a first end portion and a second end portion opposite to the first end portion, to be inserted into a slot provided in the electronic device;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the first end portion of the card is inserted into the slot; and

a second connector, provided on the second end portion of the card, for electrically connecting the data transfer circuit to the external device.

47. A system, to be operatively connected to an electronic device, comprising:

an external device providing a peripheral function for the electronic device;

a card interface, operatively connected to the external device via a wireless communication channel, to be inserted into a slot provided in the electronic device;

a data connector for transferring input information to the electronic device and output information from the electronic device when the card interface is inserted into the slot;

a wireless data transmitter/receiver for transmitting the output information to the external device and for receiving the input information from the external device via the wireless communication channel; and

a data transfer circuit, in response to receiving the input information by the wireless data transmitter/receiver, for transferring the input information to the data connector and, in response to receiving the output information by the data connector, for transferring the output information to the wireless data transmitter/receiver;

wherein the data connector, the wireless data transmitter/receiver and the data transfer circuit are incorporated with the card.

48. A system according to claim 47, wherein the wireless data transmitter/receiver transmits the output information to the external device and receives the input information from the external device via a radio communication channel.

49. A system, to be operatively connected to an electronic device, comprising:

an external device providing a peripheral function for the electronic device;

a card interface, operatively connected to the external device, to be inserted into a slot provided in the electronic device;

a converter for receiving a parallel bit digital information from the electronic device and for converting the parallel bit digital information into a serial bit digital information when the card interface is inserted into the slot; and,

a data transfer circuit for transferring the serial bit digital information from the converter to the external device, wherein the converter and the data transfer circuit are incorporated with the card.

50. A system, to be operatively connected to an electronic device, comprising:

14

an external device providing a peripheral function for the electronic device;

a card, provided with a first end portion and a second end portion, opposite to the first end portion, having a thickness greater than a thickness of the first end portion;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the first end portion of the card is inserted into a slot provided in an external wall in the body of the electronic device; and

a second data connector, provided on the second end portion, for coupling the data transfer circuit to the external device.

51. An electronic system comprising:

an electronic device, provided with a slot;

an external device providing a peripheral function for the electronic device;

a card, provided with a first end portion and a second end portion opposite to the first end portion, the first end portion inserted into the slot of the electronic device;

a data transfer circuit, incorporated with card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device; and

a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device.

52. An electronic system, comprising:

an electronic device, provided with a slot;

an external device providing a peripheral function for the electronic device;

a card, inserted into the slot of the electronic device, for operatively connecting the electronic device to the external device via a wireless communication channel;

a data connector for transferring input information to the electronic device and for receiving output information from the electronic device;

a wireless data transmitter/receiver for transmitting the output information to the external device and for receiving the input information from the external device via the wireless communication channel; and

a data transfer circuit, in response to receiving the input information by the wireless data transmitter/receiver, for transferring the input information to the data connector and, in response to receiving the output information by the connector, for transferring the output information to the wireless data transmitter/receiver;

wherein the data connector, the wireless data transmitter/receiver and the data transfer circuit are incorporated with the card.

53. An electronic system according to claim 52, wherein the wireless data transmitter/receiver transmits the output information to the external device and receives the input information from the external device via a radio communication channel.

54. An electronic system comprising:

an electronic device, provided with a slot;

an external device providing a peripheral function for the electronic device;

Re. 36,769

15

a card, inserted into the slot of the electronic device, and  
operatively connecting the electronic device to the  
external device;

a converter for receiving a parallel bit digital information  
from the electrical device and for converting the par- 5  
allel bit digital information into a serial bit digital  
information;

a data transfer circuit for coupling the serial bit digital  
information from the converter to the external device, 10  
wherein the converter and the data transfer circuit are  
incorporated with the card.

55. An electronic system, comprising:

an electronic device, provided with a slot;

an external device providing a peripheral function for the 15  
electronic device;

16

a card, provided with a first end portion inserted into the  
slot of the electronic device and a second end portion  
opposite to the first end portion, having a thickness  
greater than a thickness of the first end portion;

a data transfer circuit, incorporated with the card, for  
transferring information between the electronic device  
and the external device;

a first data connector, provided on the first end portion of  
the card, for electrically connecting the data transfer  
circuit to the electronic device when the card is inserted  
into the slot; and

a second data connector, provided on the second end  
portion, for coupling the data transfer circuit to the  
external device.

\* \* \* \* \*

## EXHIBIT B

(12) **EX PARTE REEXAMINATION CERTIFICATE** (7213th)  
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**Ozawa et al.**

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(54) **CARD TYPE INPUT/OUTPUT INTERFACE DEVICE AND ELECTRONIC DEVICE USING THE SAME**

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**G06K 19/06** (2006.01)

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See application file for complete search history.

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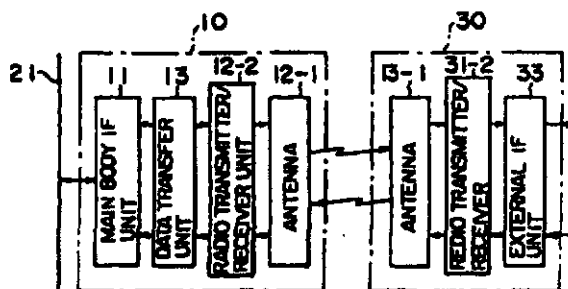
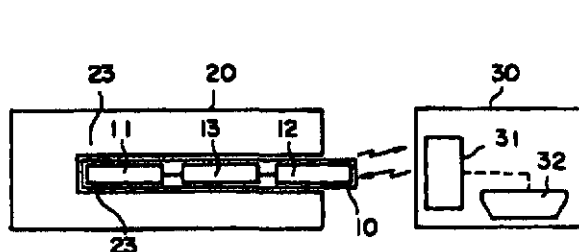
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(57) **ABSTRACT**

A card type input/output interface device includes a first connection part for transferring data between a main body of an electronic device and the card type input/output interface device, a second connection part which is coupled to the first connection part and transfers data between an external device and the card type input/output interface device, and a card supporting the first and second connection part. The first connection part is accommodated in the main body when the card type input/output interface device is inserted into a slot provided in the main body.



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Page 2

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US RE36,769 F1

1

## EX PARTE

REEXAMINATION CERTIFICATE  
ISSUED UNDER 35 U.S.C. 307THE PATENT IS HEREBY AMENDED AS  
INDICATED BELOW.

Matter enclosed in heavy brackets [ ] appeared in the patent, but has been deleted and is no longer a part of the patent; matter printed in *italics* indicates additions made to the patent.

AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT:

The patentability of claims 2, 4-18, 20, 22-39, 41-43, 45, 47-49 and 52-54 is confirmed.

Claims 1, 3, 19 and 21 were previously cancelled.

Claims 40, 44, 46, 50, 51 and 55 are cancelled.

New claims 56-96 are added and determined to be patentable.

56. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card having a thickness of 3.3 Millimeters (mm) or smaller, inserted into a slot provided in the electronic device, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device;

a first data interface unit, provided on one end of the card, for coupling to the electronic device to transfer input information to the electronic device and output information from the electronic device when the card is inserted into the slot;

a second data interface unit, provided on an opposing end of the card, for coupling to the external device to transfer the output information to the external device and the input information from the external device, wherein the second data interface unit comprises a radio transmitter/receiver for transferring the data between the external device and the card type input/output interface device through a radio communications channel; and

a data transfer circuit, incorporated with the card, in response to the input information being received by the second data interface unit, for transferring the input information to the first data interface unit and, in response to the output information being received by the first data interface unit, for transferring the output information to the second data interface unit.

57. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, inserted into a slot provided in the electronic device, provided with a first end portion and a second end portion opposite to the first end portion, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

2

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the card is inserted into the slot, wherein the first data connector electrically couples with a third data connector formed on an inner surface of the slot; and

a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device, wherein the second data connector comprises a radio transmitter/receiver for transferring the data between the external device and the card type input/output interface device through a radio communications channel.

58. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, inserted into a slot provided in the electronic device, provided with a first end portion and a second end portion opposite to the first end portion, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the card is inserted into the slot, wherein the first data connector electrically couples with a third data connector formed on an inner surface of the slot; and

a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device, wherein the second data connector comprises a radio transmitter/receiver for transferring the data between the external device and the card type input/output interface device through a radio communications channel, wherein in the inserted state the slot at least partially covers the second end portion of the card.

59. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, inserted into a slot provided in the electronic device, provided with a first end portion and a second end portion opposite to the first end portion, wherein the card is open to the external environment;

a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;

a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the card is inserted into the slot; and

a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device, wherein the second data connector comprises a radio transmitter/receiver for transferring the data between the external device and the card type input/output interface device through a radio communications channel.

60. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:

a card, inserted into a slot provided in the electronic device, provided with a first end portion and a second end portion opposite to the first end portion;

US RE36,769 F1

3

- a converter for receiving a parallel bit digital information from the electronic device and for converting the parallel bit digital information into a serial bit digital information;
  - a data transfer circuit, incorporated with the card, for transferring information between the electronic device and the external device;
  - a first data connector, provided on the first end portion of the card, for electrically connecting the data transfer circuit to the electronic device when the card is inserted into the slot, wherein the first data connector is formed on a surface of the first end portion of the card; and
  - a second data connector, provided on the second end portion of the card, for coupling the data transfer circuit to the external device, wherein the second data connector comprises a radio transmitter/receiver for transferring the data between the external device and the card type input/output interface device through a radio communications channel.
61. A card type input/output interface device for operatively connecting an electronic device to an external device, comprising:
- a card, inserted into a slot provided in the electronic device, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device;
  - a first data interface unit, provided on one end of the card, for coupling to the electronic device to transfer input information to the electronic device and output information from the electronic device when the card is inserted into the slot;
  - a second data interface unit, provided on an opposing end of the card, for coupling to the external device to transfer the output information to the external device and the input information from the external device, wherein the second data interface unit comprises a radio transmitter/receiver means for transferring the data between the external device and the card through a radio communications channel;
  - an antenna coupled to said radio transmitter/receiver means, wherein the antenna comprises a conductive pattern formed on the card; and
  - a data transfer circuit, incorporated with the card, in response to the input information being received by the second data interface unit, for transferring the input information to the first data interface unit and, in response to the output information being received by the first data interface unit, for transferring the output information to the second data interface unit.
62. A system, to be operatively connected to an electronic device, comprising:
- an external device providing a peripheral function for the electronic device, wherein the external device comprises an antenna and a wireless transmitter/receiver;
  - a card, electrically connected to the external device and inserted into a slot provided in the electronic device;
  - a first data interface unit for transmitting input information to the electronic device and for receiving output information from the electronic device when the card interface is inserted into the slot;
  - a second data interface unit for transmitting the output information to the external device and for

4

- receiving the input information from the external device, wherein the second data interface unit comprises a radio transmitter/receiver for transferring the data between the external device and the card through a radio communications channel; and
  - a data transfer circuit, in response to receiving the input information by the second data interface unit, for transferring the input information to the first data interface unit and, in response to receiving the output information by the first data interface unit, for transferring the output information to the second data interface unit, wherein the first data interface unit, the second interface unit and the data transfer circuit are incorporated with card.
63. A card type input/output interface device as claimed in claim 38, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
64. A system as claimed in claim 39, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
65. A card type input/output interface device as claimed in claim 41, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
66. A card type input/output interface device as claimed in claim 43, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
67. A system as claimed in claim 45, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
68. A system as claimed in claim 47, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
69. A system as claimed in claim 49, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
70. A system as claimed in claim 52, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
71. A system as claimed in claim 54, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
72. A card type input/output interface device as claimed in claim 57, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
73. A card type input/output interface device as claimed in claim 58, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
74. A card type input/output interface device as claimed in claim 59, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
75. A card type input/output interface device as claimed in claim 60, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
76. A card type input/output interface device as claimed in claim 61, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
77. A card type input/output interface device as claimed in claim 62, wherein the card has a thickness of 3.3 Millimeters (mm) or smaller.
78. A card type input/output interface device as claimed in claim 38, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.
79. A system as claimed in claim 39, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.
80. A card type input/output interface device as claimed in claim 41, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.
81. A card type input/output interface device as claimed in claim 42, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

US RE36,769 F1

5

82. A card type input/output interface device as claimed in claim 43, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

83. A system as claimed in claim 45, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

84. A system as claimed in claim 47, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

85. A system as claimed in claim 49, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

86. A system as claimed in claim 52, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

87. A system as claimed in claim 54, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

88. A card type input/output interface device as claimed in claim 59, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

6

89. A card type input/output interface device as claimed in claim 60, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

90. A card type input/output interface device as claimed in claim 62, wherein the slot comprises an opening formed in a sidewall of a main body of the electronic device.

91. A card type input/output interface device as claimed in claim 38, wherein the card is inserted within the slot.

92. A card type input/output interface device as claimed in claim 41, wherein the card is inserted within the slot.

93. A card type input/output interface device as claimed in claim 43, wherein the card is inserted within the slot.

94. A system as claimed in claim 45, wherein the card is inserted within the slot.

95. A system as claimed in claim 47, wherein the card is inserted within the slot.

96. A system as claimed in claim 49, wherein the card is inserted within the slot.

\* \* \* \* \*

# EXHIBIT D

**Michael Pepson**

---

**From:** Patrick Massari  
**Sent:** Wednesday, March 29, 2017 10:00 AM  
**To:** Berger, Laura  
**Cc:** laura.hurtado@pillsburylaw.com; Kara McKenna; Michael Pepson; Tully, Cathlin; Moriarty, Kevin  
**Subject:** RE: Draft proposed stipulation to dismiss D-Link Corporation from this action  
**Importance:** High

Good morning Laura,

Thank you for your message of March 21st below.

My responsive edits for the joint stipulation are as follows:

**[Plaintiff's Draft] JOINT STIPULATED MOTION TO DISMISS  
WITH PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 41 (A)(2)**

Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41(a)(2), Defendant D-Link Corporation ("D-Link Corp."), its subsidiary, Defendant D-Link Systems, Inc. ("D-Link Systems"), and Plaintiff Federal Trade Commission ("FTC") stipulate and jointly move to dismiss Plaintiff's complaint against Defendant D-Link Corp., with prejudice and with no award of fees or costs at this time, based on the following:

1. For the purposes of discovery in this matter only, upon entry of an order of dismissal, information and documents if properly discoverable and produced by D-Link Corp. are



deemed in the possession, custody, or control of Defendant D-Link Systems.

2. For the purposes of discovery in this matter only, any D-Link Corp. document, that is created and maintained by D-Link Corp. during its ordinary course of business and is produced in response to a proper discovery request, shall be deemed authentic.

3. For the purposes of this matter only and subject to reservation of right to object by D-Link Corp., the FTC shall serve any proper interrogatory, request for production of documents, subpoena, notice, or any other proper written discovery, pursuant to Fed. R. Civ. P. 26 to Fed. R. Civ. P. 37, and Fed. R. Civ. P. 45, of D-Link Corp., its officers, or employees, by serving the same via electronic mail and First Class U.S. Mail upon Patrick J. Massari, Esq., Cause of Action Institute, 1875 Eye Street, NW, Suite 800, Washington, D.C. 20006.

We can discuss this, and the other matters raised by FTC, in our continuing Rule 26(f) conference call this afternoon.

Best Regards,

/ Patrick

**Patrick J. Massari | Assistant Vice President | Cause of Action Institute**

**1875 Eye Street NW, Suite # 800  
Washington, D.C. 20006**

**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**

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**Admitted in Maryland and the District of Columbia**

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---

**From:** Berger, Laura [mailto:LBERGER@ftc.gov]

**Sent:** Tuesday, March 21, 2017 3:37 PM

**To:** Patrick Massari <patrick.massari@causeofaction.org>

**Cc:** laura.hurtado@pillsburylaw.com; Kara McKenna <Kara.McKenna@causeofaction.org>; Michael Pepson <michael.pepson@causeofaction.org>; Tully, Cathlin <ctully@ftc.gov>; Moriarty, Kevin <kmoriarty@ftc.gov>

**Subject:** Draft proposed stipulation to dismiss D-Link Corporation from this action

Hello Patrick,

As promised, here is our proposed stipulation to dismiss D-Link Corporation as a defendant in this action. Our proposal offers a means to address our concerns about being able to obtain discoverable materials from D-Link Corporation, following a voluntary dismissal; we are open to discussing other avenues to address these concerns and to considering appropriate compromises. We appreciate that obtaining a dismissal "with prejudice" is a key objective for you, but hope that you will entertain discussions of the voluntary dismissal we have proposed. As you may know, D-Link Corporation has negotiated its voluntary dismissal in at least one other action involving D-Link Systems.

We understand that one of your team is no longer able to meet this Thursday, but that you are available next Tuesday or Wednesday to meet. Could you meet at **10 am PT/1 pm ET on Wednesday, March 29<sup>th</sup>**?

Thank you in advance for your consideration.

Regards,

Laura

Laura D. Berger  
Federal Trade Commission  
Attorney, Division of Privacy and Identity Protection  
901 Market Street, Suite 570  
San Francisco, CA 94103  
202.326.2471 (direct)  
[lberger@ftc.gov](mailto:lberger@ftc.gov)



**[Plaintiff's Draft] JOINT STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41 (A)(2)**

Pursuant to Federal Rule of Civil Procedure ("FRCP") 41(a)(2), Defendant D-Link Corporation ("DLC"), its subsidiary, Defendant D-Link Systems, Inc. ("DLS"), and Plaintiff Federal Trade Commission ("FTC") stipulate and jointly move to dismiss Plaintiff's complaint against Defendant DLC, without prejudice to reinstate and with no award of fees or costs, based on the following:

1. For the purposes of this matter only, all acts and omissions of DLC are imputed to Defendant DLS.
2. For the purposes of discovery in this matter only, upon entry of an order of dismissal, discoverable information and documents in the possession, custody or control of DLC are deemed in the possession, custody, or control of Defendant DLS. Defendant DLS shall respond to all interrogatories, document requests, and requests for admission by providing information and documents on its behalf and on behalf of its agent, DLC. In response to interrogatory or document requests or requests for admission, Defendant DLS shall include in its response such responsive information and documents from its agent, DLC, provided that the requested materials are otherwise discoverable. Defendant DLS, in making its initial disclosures pursuant to FRCP 26(a)(1), shall also disclose information required by FRCP 26(a)(1) and 26(e) relating to its agent, DLC.
3. For the purposes of FRE 901, any DLC document produced by Defendant DLS in response to a discovery request shall be deemed authentic and admissible for the purposes of this matter only.
4. For the purposes of oral examination in this matter only, upon entry of an order of dismissal, DLC and DLS stipulate that the FTC shall serve any subpoena, notice, or other request for any depositions of DLC, its officers, or employees, including personal and corporate depositions pursuant to FRCP 30(b)(1) or 30(b)(6), by serving the same on Defendant DLS and that any subpoena or request so served shall have the force and effect of a subpoena served directly on DLS. Any depositions of DLC, its officers, or employees, including personal and corporate depositions pursuant to FRCP 30(b)(1) or 30(b)(6), respectively, shall occur at Plaintiff's San Francisco office, according to the terms contained in the Case Management Order for this matter.
5. For the purposes of FRCP 37, Defendant DLS agrees that it assumes responsibility and liability for DLC's compliance with any discovery requests.
6. DLC's obligation to preserve evidence that may be relevant to this action continues through to the action's conclusion. DLC's duty extends to documents, data, and tangible things (with those terms to be interpreted in the broadest possible manner that is consistent with the Federal Rules of Civil Procedure) in its possession, custody, or control, regardless of geographic location, as well as any employees, agents, contractors, or other non-parties who possess materials reasonably anticipated to be subject to discovery in this action. Defendant DLS and its counsel are under an obligation to exercise all reasonable efforts to identify and notify its agent, DLC, and non-parties, including DLC's employees, whether they are located in the United States or abroad.

# EXHIBIT E

## Michael Pepson

---

**From:** Berger, Laura <LBERGER@ftc.gov>  
**Sent:** Friday, March 31, 2017 3:53 PM  
**To:** Patrick Massari  
**Cc:** laura.hurtado@pillsburylaw.com; Kara McKenna; Michael Pepson; Tully, Cathlin; Moriarty, Kevin  
**Subject:** RE: Draft proposed stipulation to dismiss D-Link Corporation from this action

Hello Patrick,

Here is our response to your March 29<sup>th</sup> counterproposal, regarding a joint stipulation to dismiss DLC from this action. To avoid confusion, I note that you inadvertently designated your March 29<sup>th</sup> counterproposal as "Plaintiff's Draft".

Regards,

Laura

Laura D. Berger  
Federal Trade Commission  
Attorney, Division of Privacy and Identity Protection  
901 Market Street, Suite 570  
San Francisco, CA 94103  
202.326.2471 (direct)  
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### **[Plaintiff's March 31, 2017, Draft] JOINT STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)**

Pursuant to Federal Rule of Civil Procedure ("FRCP") 41(a)(2), Defendant D-Link Corporation ("DLC"), its subsidiary, Defendant D-Link Systems, Inc. ("DLS"), and Plaintiff Federal Trade Commission ("FTC") stipulate and jointly move to dismiss Plaintiff's complaint against Defendant DLC, without prejudice to reinstate and with no award of fees or costs, based on the following:

1. For the purposes of this matter only, all acts and omissions of DLC that are relevant to this action are imputed to Defendant DLS.
2. For the purposes of discovery in this matter only, upon entry of an order of dismissal, documents in the possession, custody or control of DLC are deemed in the possession, custody, or control of Defendant DLS, to the extent they are relevant to any party's claim or defense.
3. In this matter only, any DLC document produced by Defendant DLS in response to a discovery request shall be deemed authentic, pursuant to FRE 901, and a business record, pursuant to FRE 803(6).
4. For the purposes of discovery in this matter only, DLC shall be treated as if it were subject to the Federal Rules of Civil Procedure as a third-party located in the United States. When directing a discovery request to DLC, the FTC shall serve any document requests, subpoenas, notice, or other request for any depositions of DLC, its officers, or employees, including personal and corporate depositions pursuant to FRCP 30(b)(1) or 30(b)(6), by serving

the same by via electronic mail and First Class U.S. Mail upon Patrick J. Massari, Esq., Cause of Action Institute, 1875 Eye Street, NW, Suite 800, Washington, D.C. 20006.

5. DLC's obligation to preserve evidence that may be relevant to this action continues through to the action's conclusion. DLC's duty extends to documents, data, and tangible things (with those terms to be interpreted in the broadest possible manner that is consistent with the Federal Rules of Civil Procedure) in its possession, custody, or control, regardless of geographic location, as well as any employees who possess materials relevant to any party's claim or defense. Defendant DLS and its counsel are under an obligation to exercise all reasonable efforts to identify and notify its agent, DLC, including DLC's employees, whether they are located in the United States or abroad.

---

**From:** Patrick Massari [mailto:patrick.massari@causeofaction.org]

**Sent:** Wednesday, March 29, 2017 7:00 AM

**To:** Berger, Laura

**Cc:** laura.hurtado@pillsburylaw.com; Kara McKenna; Michael Pepson; Tully, Cathlin; Moriarty, Kevin

**Subject:** RE: Draft proposed stipulation to dismiss D-Link Corporation from this action

**Importance:** High

Good morning Laura,

Thank you for your message of March 21st below.

My responsive edits for the joint stipulation are as follows:

**[Plaintiff's Draft] JOINT STIPULATED MOTION TO DISMISS  
WITH PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 41 (A)(2)**

Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41(a)(2), Defendant D-Link Corporation ("D-Link Corp."), its subsidiary, Defendant D-Link Systems, Inc. ("D-Link Systems"), and Plaintiff Federal Trade Commission ("FTC") stipulate and jointly move to dismiss Plaintiff's complaint against Defendant D-Link Corp., with prejudice and with no award of fees or costs at this time, based on the following:

1. For the purposes of discovery in this matter only, upon entry of an order of dismissal, information and documents if properly discoverable and produced by D-Link Corp. are deemed in the possession, custody, or control of Defendant D-Link Systems.
2. For the purposes of discovery in this matter only, any D-Link Corp. document, that is created and maintained by D-Link Corp. during its ordinary course of business and is produced in response to a proper discovery request, shall be deemed authentic.
3. For the purposes of this matter only and subject to reservation of right to object by D-Link Corp., the FTC shall serve any proper interrogatory, request for production of documents, subpoena, notice, or any other proper written discovery, pursuant to Fed. R. Civ. P. 26 to Fed. R. Civ. P. 37, and Fed. R. Civ. P. 45, of D-Link Corp., its officers, or employees, by serving the same via electronic mail and First Class U.S. Mail upon Patrick J. Massari, Esq., Cause of Action Institute, 1875 Eye Street, NW, Suite 800, Washington, D.C. 2006.

We can discuss this, and the other matters raised by FTC, in our continuing Rule 26(f) conference call this afternoon.

Best Regards,

/ Patrick

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**From:** Berger, Laura [<mailto:LBERGER@ftc.gov>]

**Sent:** Tuesday, March 21, 2017 3:37 PM

**To:** Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>

**Cc:** [laura.hurtado@pillsburylaw.com](mailto:laura.hurtado@pillsburylaw.com); Kara McKenna <[Kara.McKenna@causeofaction.org](mailto:Kara.McKenna@causeofaction.org)>; Michael Pepson <[michael.pepson@causeofaction.org](mailto:michael.pepson@causeofaction.org)>; Tully, Cathlin <[ctully@ftc.gov](mailto:ctully@ftc.gov)>; Moriarty, Kevin <[kmoriarty@ftc.gov](mailto:kmoriarty@ftc.gov)>

**Subject:** Draft proposed stipulation to dismiss D-Link Corporation from this action

Hello Patrick,

As promised, here is our proposed stipulation to dismiss D-Link Corporation as a defendant in this action. Our proposal offers a means to address our concerns about being able to obtain discoverable materials from D-Link Corporation, following a voluntary dismissal; we are open to discussing other avenues to address these concerns and to considering appropriate compromises. We appreciate that obtaining a dismissal "with prejudice" is a key objective for you, but hope that you will entertain discussions of the voluntary dismissal we have proposed. As you may know, D-Link Corporation has negotiated its voluntary dismissal in at least one other action involving D-Link Systems.

We understand that one of your team is no longer able to meet this Thursday, but that you are available next Tuesday or Wednesday to meet. Could you meet at **10 am PT/1 pm ET on Wednesday, March 29<sup>th</sup>**?

Thank you in advance for your consideration.

Regards,

Laura

Laura D. Berger

Federal Trade Commission  
Attorney, Division of Privacy and Identity Protection  
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San Francisco, CA 94103  
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**[Plaintiff's Draft] JOINT STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE PURSUANT  
TO FEDERAL RULE OF CIVIL PROCEDURE 41 (A)(2)**

Pursuant to Federal Rule of Civil Procedure ("FRCP") 41(a)(2), Defendant D-Link Corporation ("DLC"), its subsidiary, Defendant D-Link Systems, Inc. ("DLS"), and Plaintiff Federal Trade Commission ("FTC") stipulate and jointly move to dismiss Plaintiff's complaint against Defendant DLC, without prejudice to reinstate and with no award of fees or costs, based on the following:

1. For the purposes of this matter only, all acts and omissions of DLC are imputed to Defendant DLS.
2. For the purposes of discovery in this matter only, upon entry of an order of dismissal, discoverable information and documents in the possession, custody or control of DLC are deemed in the possession, custody, or control of Defendant DLS. Defendant DLS shall respond to all interrogatories, document requests, and requests for admission by providing information and documents on its behalf and on behalf of its agent, DLC. In response to interrogatory or document requests or requests for admission, Defendant DLS shall include in its response such responsive information and documents from its agent, DLC, provided that the requested materials are otherwise discoverable. Defendant DLS, in making its initial disclosures pursuant to FRCP 26(a)(1), shall also disclose information required by FRCP 26(a)(1) and 26(e) relating to its agent, DLC.
3. For the purposes of FRE 901, any DLC document produced by Defendant DLS in response to a discovery request shall be deemed authentic and admissible for the purposes of this matter only.
4. For the purposes of oral examination in this matter only, upon entry of an order of dismissal, DLC and DLS stipulate that the FTC shall serve any subpoena, notice, or other request for any depositions of DLC, its officers, or employees, including personal and corporate depositions pursuant to FRCP 30(b)(1) or 30(b)(6), by serving the same on Defendant DLS and that any subpoena or request so served shall have the force and effect of a subpoena served directly on DLS. Any depositions of DLC, its officers, or employees, including personal and corporate depositions pursuant to FRCP 30(b)(1) or 30(b)(6), respectively, shall occur at Plaintiff's San Francisco office, according to the terms contained in the Case Management Order for this matter.
5. For the purposes of FRCP 37, Defendant DLS agrees that it assumes responsibility and liability for DLC's compliance with any discovery requests.
6. DLC's obligation to preserve evidence that may be relevant to this action continues through to the action's conclusion. DLC's duty extends to documents, data, and tangible things (with those terms to be interpreted in the broadest possible manner that is consistent with the Federal Rules of Civil Procedure) in its possession, custody, or control, regardless of geographic location, as well as any employees, agents, contractors, or other non-parties who possess materials reasonably anticipated to be subject to discovery in this action. Defendant DLS and its counsel are under an obligation to exercise all reasonable efforts to identify and notify its agent, DLC, and non-parties, including DLC's employees, whether they are located in the United States or abroad.



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14 *Attorneys for Defendants D-Link Corporation  
and D-Link Systems, Inc.*

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

18  
19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 vs.

22 D-LINK CORPORATION

23 and

24 D-LINK SYSTEMS, INC.,

25 Defendants.  
26  
27  
28

No. 3:17-cv-00039-JD

**DECLARATION OF WILLIAM BROWN  
IN SUPPORT OF DEFENDANT D-LINK  
CORPORATION'S MOTION TO  
DISMISS**



**DECLARATION OF WILLIAM BROWN**

The undersigned declarant, William Brown, states:

1. I am Chief Information Security Officer at D-Link Systems, Inc. ("D-Link Systems"). Unless stated otherwise, the following facts are based on my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
2. I have reviewed the Federal Trade Commission ("FTC" or "Commission") Complaint in the above-captioned action. I provide this Declaration to address certain allegations in the Complaint concerning the relationship between D-Link Systems and D-Link Corporation ("D-Link Corp.").
3. D-Link Systems was incorporated in 1986 in the State of California and is organized under the laws of the State of California. D-Link Systems' principal place of business is in Fountain Valley, California. Among other things, D-Link Systems sells a variety of differentiated router and IP camera products in the United States.
4. D-Link Systems is a subsidiary of D-Link Corp. As further explained below, D-Link Systems is its own separate, distinct, and independent business entity, and makes its own business decisions.
5. D-Link Systems sells products in the United States that use the D-Link brand name owned by D-Link Corp. D-Link Corp. has owned the "D-Link" brand name for more than thirty (30) years.
6. D-Link Systems communicates with D-Link Corp. personnel on various issues and keeps D-Link Corp. informed of matters that may be relevant to D-Link Corp., or other businesses that sell D-Link brand products in other parts of the world. Examples include: (1) technology D-Link Corp. and other wholly or partially owned subsidiaries have developed for products that are not sold in the United States, which D-Link Systems could potentially borrow from and work with its own third-party vendor-manufacturers to adapt and customize to develop products for sale in the United States; (2) what feature

1 sets of various products D-Link Systems may wish to decide to conduct testing for; and  
2 (3) ideas for new products to be sold under the D-Link brand.

3 7. However, D-Link Corp. does not direct, control or influence D-Link Systems'  
4 daily operations or internal affairs.

5 8. D-Link Systems has its own corporate management team with corporate officers  
6 and executives, including President, Controller, Vice Presidents, legal team (separate in-  
7 house legal counsel), and Marketing team who are employees of D-Link Systems  
8 working in the United States and are completely independent from D-Link Corp.

9 9. D-Link Systems maintains management and accounting systems that are separate  
10 from those of D-Link Corp. D-Link Systems does not comingle funds or assets with D-  
11 Link Corp.

12 10. D-Link Systems maintains its own records regarding payroll for its own  
13 employees and for other financial matters. D-Link Systems pays its own employees.

14 11. D-Link Systems files its own federal, state, and local taxes in the United States.  
15 D-Link Systems pays its own taxes.

16 12. D-Link Systems executes leases for property under its own name (for example,  
17 for the warehouse it uses) and pays its own utility and other bills in its own name.

18 13. D-Link Systems does not share any offices or team of employees with D-Link  
19 Corp.; D-Link Systems uses completely different offices and team of employees than D-  
20 Link Corp.

21 14. D-Link Systems is responsible for its debts and accounts receivable. D-Link  
22 Systems does not hold itself out as responsible for the debts of D-Link Corp.; D-Link  
23 Systems does not hold D-Link Corp. out as responsible for D-Link Systems' debts. D-  
24 Link Systems is not a general agent of D-Link Corp. and does not have the authority to  
25 enter into contracts for or otherwise conduct business on behalf of D-Link Corp.

26 15. D-Link Systems does not purchase goods from D-Link Corp.; D-Link Systems  
27 has not purchased any goods from D-Link Corp. since May, 2006.



16. D-Link Corp. does not manufacture the products (including routers and IP cameras) D-Link Systems sells in the United States; since at least 2005, D-Link Corp. has not manufactured any products sold by D-Link Systems

17. D-Link Systems has not received routers or IP cameras from D-Link Corp. since May, 2006. Instead, D-Link Systems receives the products it sells (including IP cameras and routers) directly from the independent third party vendors that manufacture and create and provide firmware updates for those products.

18. D-Link Systems has a different team of employees in management, in-house legal, operations, marketing, sales, product department, technical support, accounting, finance, etc. than those employed by D-Link Corp. D-Link Systems does not share the same team of employees with D-Link Corp.

19. All materials attached as exhibits to the FTC's Complaint (PX1-PX11) were created by D-Link Systems, Inc. To the best of my knowledge, D-Link Systems would, however, share with or allow D-Link Corp. and other wholly or partially owned subsidiaries, if they so desire, to use the information in said advertisements.

20. D-Link Systems, not D-Link Corp., owns, hosts, and manages the "dlink.com" domain name, as well as the "us.dlink.com" domain name. Likewise, D-Link Systems owns, hosts, and manages "support.dlink.com" and other specific marketing cites ending in "dlink.com." The content of those websites is controlled by D-Link Systems' marketing department, with input, as appropriate, from D-Link Systems' internal legal team and outside counsel. D-Link Systems also controls the English-language content of the "mydlink.com" website; D-Link Systems is responsible for and owns the copyright for the content of the "mydlink.com" website in the English language.

21. With respect to the "Security Event Response Policy" referenced in Paragraph 20 of the Complaint (PX1), D-Link Systems developed it without feedback from or any other involvement by D-Link Corp. or other entities that sell D-Link brand products in other parts of the world. To assist D-Link Corp., D-Link Europe, and other entities that

1 sell D-Link brand products exclusively outside of the United States, the Security Event  
2 Response Policy additionally allowed users of D-Link products in Europe, Canada, and  
3 elsewhere to have an additional forum to report issues they might have with those  
4 products, even though such products are not sold in the United States. Consistent with  
5 this, D-Link Systems has received reports regarding D-Link brand products it does not  
6 sell, and which are not sold in the United States, from users in various other nations,  
7 which D-Link Systems subsequently relayed and communicated about with D-Link Corp.  
8 D-Link Systems does, at times, communicate with D-Link Corp. and other sellers of D-  
9 Link brand products about issues affecting products only outside of the United States.

10 22. D-Link Systems develops its own marketing and advertising materials for the  
11 products it sells; D-Link Corp. has no control over the development of those materials.

12 23. D-Link Systems develops and controls the warranty cards and user manuals that  
13 are packaged with all D-Link Systems products sold in the United States, as well as  
14 related brochures and sales information, which are developed by D-Link Systems'  
15 marketing department in California.

16 24. D-Link Systems oversees what tests are going to be conducted to validate  
17 firmware in products like routers that D-Link Systems sells in the United States. For  
18 certain products, D-Link Corp. will provide suggestion or guidance on recommended  
19 tests to potentially have performed; however, D-Link Systems has authority to make the  
20 final decisions and is free to reject such guidance, if it chooses to do so.

21 25. D-Link Systems is responsible for addressing any potential security  
22 vulnerabilities for any products that are sold by D-Link Systems in the United States. D-  
23 Link Corp. will sometimes inform D-Link Systems of potential vulnerabilities to be  
24 aware of; for example, if a product sold in other parts of the world might potentially have  
25 an issue, analogous products we sell in the United States may also potentially need to be  
26 evaluated to determine whether similar issues may be present. But D-Link Systems is  
27  
28



1 responsible for addressing any potential security vulnerabilities for any products that are  
2 sold by D-Link Systems.

3 26. D-Link Systems products (including IP cameras and routers) are from third-party  
4 vendors (not D-Link Corp.) that manufacture those products and then ship those products  
5 to D-Link Systems. D-Link Systems has authority to specify what the security  
6 requirements should be for such products.

7 27. All of the third-party vendors that manufacture, ship, and create firmware updates  
8 for the routers and IP cameras that D-Link Systems sells in the United States are located  
9 in China, Hong Kong, or Taiwan.

10 28. Most of the vendors that manufacture products for D-Link Systems conduct  
11 business in the Chinese language. For that reason, business negotiations and product-  
12 related communications are commonly in Chinese. Contracts and other written  
13 communications may also be in the Chinese language. Many of the comments in the  
14 source code for D-Link Systems products are also written in Chinese.

15 29. I do not speak Chinese. I also cannot read or write in Chinese.

16 30. For this reason, there is a language barrier that exists between the third-party  
17 vendors that manufacture and provide product support for D-Link Systems products and  
18 D-Link Systems. D-Link Corp. will be requested by D-Link Systems, from time to time,  
19 to facilitate the communications and provide a bilingual bridge of that barrier—a conduit  
20 to facilitate (and, as necessary, translate) communications between D-Link Systems and  
21 its overseas vendors.

22 31. However, with respect to the products that these vendors manufacture for D-Link  
23 Systems, specifically, for sale in the United States, D-Link Systems makes independent  
24 decisions as to what products D-Link Systems will sell, what functions those products  
25 will perform, and what features those products will have. D-Link Corp.'s role, at least  
26 with respect to D-Link Systems products intended for sale in the United States, is limited  
27 to conveying information, at times, between D-Link Systems and the third party vendor.

1       32.       If D-Link Systems believes a variant of a product using the D-Link brand that D-  
2       Link Corp. and/or its non-U.S. subsidiaries sell in other parts of the world may also be  
3       suitable for sale in the United States, subject to appropriate customization and tailoring,  
4       D-Link Systems makes the corporate decision to instruct the third-party vendor-  
5       manufacturer of the product to tailor and change the product design and features for the  
6       United States market. D-Link Systems decides what specific features and functions D-  
7       Link brand products sold in the United States by D-Link Systems use or contain.

8       33.       If D-Link Systems does not want to sell a D-Link branded product in the United  
9       States, it cannot be forced to do so. D-Link Systems has the authority to stop or refuse a  
10      D-Link brand product from being sold in the United States if D-Link Systems determines  
11      that the security features are not appropriate for the market or for any other reason.

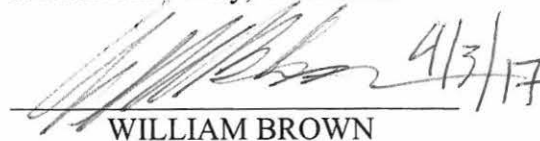
12      34.       D-Link Corp. personnel also, at times, help translate the reports for the testing of  
13      D-Link Systems products by an independent third party security testing company located  
14      in Taiwan (formerly known as the Institute for Information Industry, or “III,” and  
15      renamed Onward Security Corporation, or “OWS,” in late 2014). OWS conducts tests on  
16      D-Link Systems products overseas in Taiwan; OWS does not perform tests on D-Link  
17      Systems products in the United States. Because OWS is located in Taiwan, it can  
18      promptly communicate with the manufacturers in Taiwan, China and Hong Kong to  
19      identify the vulnerabilities, propose recommendation to address the issues and conduct  
20      further testing on the update fix firmware to ensure the proper function of firmware.  
21      When the testing reports are issued by OWS, they are mostly reported in the Chinese  
22      language for the manufacture’s engineers to review and evaluate. At D-Link Systems’  
23      request, D-Link Corp. personnel will sometimes translate the results of such testing into  
24      the English language and relay the results.

25      35.       The FTC issued a civil investigative demand (“CID”) to D-Link Systems dated  
26      June 13, 2013, propounding interrogatories and requiring production of documents and  
27      obtained records from D-Link Systems traced back at least to January 1, 2011. The FTC  
28

1 issued a CID for oral testimony to D-Link Systems dated June 5, 2014 and a separate  
2 CID for oral testimony to me also dated June 5, 2014, and D-Link Systems fully  
3 complied with all such CIDs issued by FTC in this case.  
4

5 I declare under penalty of perjury under the laws of the United States that the foregoing is  
6 true and correct.

7 Executed this 3rd day of April, 2017 at Fountain Valley, California.

8  4/3/17  
9 WILLIAM BROWN

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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17  
18 SAN FRANCISCO DIVISION

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 vs.

22 D-LINK CORPORATION

23 and

24 D-LINK SYSTEMS, INC.,

25 Defendants.  
26  
27  
28

No. 3:17-cv-00039-JD

**DECLARATION OF CHUNG-CHIEH LIN  
IN SUPPORT OF DEFENDANT D-LINK  
CORPORATION'S MOTION TO  
DISMISS**



**DECLARATION OF Chung-Chieh LIN**

The undersigned declarant, Chung-Chieh LIN, states:

1. I am Director of Legal Department at D-Link Corporation (“D-Link Corp.”). Unless stated otherwise, the following facts are based on my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
2. I have reviewed the Federal Trade Commission (“FTC” or “Commission”) Complaint in the above-captioned action. I provide this Declaration to address certain allegations in the Complaint concerning the relationship between D-Link Systems and D-Link Corp.
3. D-Link Corp. is a company organized under the laws of Taiwan. D-Link Corp. has its principal place of business in Taipei City, Taiwan.
4. D-Link Corp. sells products domestically in Taiwan and does not sell any products to the United States.
5. D-Link Corp. has never designated D-Link Systems to be a registered agent in the United States or the state of California.
6. D-Link Corp. does not have control over or involvement in D-Link Systems’ day-to-day business. D-Link Corp. and D-Link Systems have their own separate teams of employees.
7. D-Link Corp. does not share any offices with D-Link Systems. Nor does D-Link Corp. have any office in the United States.
8. D-Link Corp. does not control or decide what products D-Link Systems sells in the United States, what features D-Link Systems’ products have, or how D-Link Systems advertises the products D-Link Systems chooses to sell in the United States. For instance, D-Link Corp. cannot force D-Link Systems to sell particular products in the United States; D-Link Systems is free to refuse to sell any D-Link brand product it wants, if it believes such product is not appropriate for the United States market.

1           9.           Nor does D-Link Corp. control D-Link Systems' decisions regarding product  
2           testing. Instead, D-Link Systems is responsible for and has authority to make decisions  
3           about testing the products D-Link Systems chooses to sell in the United States.

4           10.          D-Link Corp. does not manufacture any of the products that D-Link Systems sells  
5           in the United States. For instance, D-Link Corp. does not manufacture the Internet-  
6           protocol ("IP") cameras and routers that D-Link Systems sells in the United States.

7           11.          D-Link Corp. does not create firmware updates for products D-Link Systems sells  
8           in the United States. Instead, firmware updates for D-Link Systems products are  
9           designed, developed, and created by the third-party vendors that manufacture the  
10          products D-Link Systems sells.

11          12.          In part for the above-described reasons, there is no legal obligation or  
12          responsibility for D-Link Corp. to provide product support to United States consumers  
13          for the IP cameras and routers that D-Link Systems sells in the United States.

14          13.          D-Link Corp. does not currently sell in and has not sold any goods into the United  
15          States since May 2006.

16          14.          D-Link Corp. does not ship any goods to D-Link Systems or any other person or  
17          entity in the United States. D-Link Corp. has not shipped goods to D-Link Systems for  
18          sale in the United States since May 2006 and has not shipped goods to D-Link Systems or  
19          any other person or entity in the United States since 2008. Between May 2006 and  
20          August 2008, D-Link Corp. shipped sixteen (16) units of the products to D-Link Systems  
21          in Fountain Valley, California: two (2) platform memory components, ten (10) IP phones,  
22          and four (4) telephone adapters. These shipments were not for re-sale. D-Link Corp. did  
23          not manufacture these products.

24          15.          D-Link Systems does not purchase the products it sells from D-Link Corp. and  
25          has not purchased goods from D-Link Corp. since May 2006.

26          16.          D-Link Corp. does not have any offices, warehouses, bank accounts, leased  
27          premises, contracts, or customers in the United States. D-Link Corp. does not own, rent,  
28

1 lease, or possess any real or personal property in the United States. D-Link Corp. does  
2 not otherwise conduct sales activities in the United States.

3 17. D-Link Corp. does not hold a certificate or other license to do business in  
4 California. Nor does D-Link Corp. hold a certificate or other license to do business in the  
5 United States.

6 18. D-Link Corp. does not have any employees in the United States.

7 19. D-Link Corp. does not pay taxes to any government entity in the United States.

8 20. D-Link Corp. does not target the products it sells in Taiwan at or to residents of  
9 the United States. For example, D-Link Corp. operates a website, [www.dlinktw.com.tw](http://www.dlinktw.com.tw),  
10 directed to Taiwanese consumers only, and if consumers outside Taiwan want to  
11 purchase products from this website, it does not ship the products outside Taiwan.  
12 Therefore, consumers outside Taiwan cannot purchase the products from the website.

13 21. D-Link Corp. does not advertise in or market its products to the United States.

14 22. D-Link Corp. did not draft or otherwise create or approve any of the  
15 advertisements and other materials attached as exhibits to the FTC's Complaint. Nor  
16 does D-Link Corp. draft or otherwise create or approve any other advertisements or  
17 marketing materials that D-Link Systems disseminates. D-Link Corp. does not exercise  
18 control over the development of these materials. The reason for D-Link Corp. to be on  
19 the copyright notice of certain of those advertisements is that D-Link Corp. is the original  
20 owner and first user of the trademark of D-Link and has permitted D-Link Systems to use  
21 it in the United States. I understand that the copyright notice has been used for more than  
22 twenty five (25) years. However, D-Link Corp. has not sold such products in or directed  
23 such products to the United States since 2006.

24 23. D-Link Corp. does not own, operate, host, or manage the websites D-Link  
25 Systems uses to market and sell its products. For instance, D-Link Systems owns, hosts,  
26 and manages the "dlink.com" domain name, as well as the "us.dlink.com" domain name.  
27 Likewise, D-Link Systems owns, hosts, and manages "support.dlink.com" and other  
28

specific marketing cites ending in “dlink.com.” D-Link Corp. does not develop and has no control over the content of those websites. Nor does D-Link Corp. have control over the English-language content of the “mydlink.com” website; D-Link Systems is responsible for and owns the copyright for the content of the “mydlink.com” website in the English language.

24. D-Link Corp. is not involved in drafting or otherwise developing the warranty cards and user manuals that are packaged with D-Link Systems products sold in the United States. D-Link Corp. also does not draft or otherwise develop the content of any privacy policies D-Link Systems may choose to use in connection with its independent business activities. Nor is D-Link Corp. involved in drafting or otherwise developing brochures and sales information for products D-Link Systems sells in the United States. D-Link Corp. does not control the content of any of these materials.

25. As further described below, for practical reasons, D-Link Corp. personnel will, at times, assist D-Link Systems personnel with translating communications from Chinese to English. The third-party vendors that manufacture and provide firmware updates for the products D-Link Systems sells in the United States commonly conduct business in Chinese, as these vendors are based in Taiwan, China, and Hong Kong. Contracts and other written communications may also be in Chinese. Conversely, D-Link Systems conducts business in English. In part for this reason, there can be a language barrier between D-Link Systems personnel and the third-party vendor-manufacturers D-Link Systems chooses to use to manufacture and provide firmware updates for the products it sells.

26. D-Link Corp. has bilingual employees who can speak, read, and write in both Chinese and English. As a result, D-Link Corp. personnel are able to bridge certain language and geographic barriers between D-Link Systems personnel who cannot speak, read, or write in Chinese, and the third-party vendors that manufacture the products D-Link Systems sells.

1       27.       For example, D-Link Corp. personnel are able to facilitate communications  
2       between D-Link Systems and the above-described third-party vendor-manufacturers by  
3       translating messages from D-Link Systems from English into Chinese and relaying such  
4       messages to D-Link Systems' vendor-manufacturers and then translating the vendor-  
5       manufacturers' messages from Chinese to English and relaying those messages to D-Link  
6       Systems.

7       28.       At times, D-Link Corp. assists D-Link Systems in facilitating communications  
8       with D-Link Systems' third-party vendors (which manufacture the products D-Link  
9       Systems sells and whose engineers develop firmware fixes for such products);  
10      communicates with the vendor's engineers in connection with firmware fixes for D-Link  
11      brand products; and has retained an independent third party security company to test  
12      various D-Link brand products, which independent subsidiaries that sell variants of D-  
13      Link brand products in other parts of the world, such as D-Link Systems, may also  
14      choose to use. This independent third party security company—formerly known as the  
15      Institute for Information Industry, or "III," and renamed "Onward Security Corporation"  
16      in late 2014—is located in Taipei, Taiwan, and conducts all of its security testing of D-  
17      Link brand products in Taiwan. Because the third party security company reports the test  
18      results in the Chinese language, D-Link Corp. personnel will sometimes translate the  
19      results of such testing into the English language when D-Link Systems decides to use its  
20      testing services and relay the results.

21      29.       However, D-Link Corp. is not responsible for and does not control D-Link  
22      Systems' own independent business decisions relating to security testing of the products  
23      D-Link Systems sells. For example, D-Link Systems is not required to use the third party  
24      security testing company that D-Link Corp. works with to test D-Link Systems' products  
25      in Taiwan. Likewise, D-Link Systems is free to consult and retain other third parties to  
26      conduct security testing on the products it chooses to offer to United States consumers.





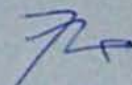
30. I understand that Paragraph 15(b) of the FTC's Complaint contains allegations relating to a "private key." Those allegations are factually inaccurate to the extent the FTC's Complaint suggests that D-Link Corp. is in any way responsible for any public availability of a "private key." D-Link Corp. has not made a "private key" publicly available. D-Link Corp. does not exercise control over the practices and procedures independent third party vendors in Taiwan, China, and Hong Kong use to design, manufacture, and develop firmware updates for the products D-Link Systems sells, including insofar as such practices relate to a private key.

31. It will take approximately 14 hours (one-way) in flight time for a D-Link Corp.'s witness to fly from Taiwan to California and the plane ticket costs over USD \$4,000.00 (round trip) or more for business fare depending on the season and seat availability.

32. I understand that D-Link Corp. has been a named defendant in lawsuits in United States courts. For business reasons, including fostering predictability and certainty and minimizing the potential burden and expense of defending against lawsuits in a foreign country with a foreign legal system, D-Link Corp. does not take actions it understands may potentially render it subject to lawsuits in the United States under principles of United States law. D-Link Corp. decided about ten years ago to purposefully avoid activities that might be deemed to subject D-Link Corp. to the jurisdiction of United States Courts under United States law. For example, and as described above, D-Link Corp. has not sold anything to D-Link Systems since May 2006 and has not shipped anything to D-Link Systems since August 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of April, 2017 at Taipei, Taiwan.

  
Chung-Chieh LIN

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14 *and D-Link Systems, Inc.*

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18  
19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 vs.

22 D-LINK CORPORATION

23 and

24 D-LINK SYSTEMS, INC.,

25 Defendants.  
26  
27  
28

No. 3:17-cv-00039-JSC

**[PROPOSED] ORDER GRANTING  
DEFENDANT D-LINK CORPORATION'S  
MOTION TO DISMISS ALL CLAIMS  
AGAINST D-LINK CORPORATION  
WITH PREJUDICE**



1 This matter came before the Court on April 3, 2017, upon a motion filed by defendant D-  
2 Link Corporation (“D-Link Corp.”) pursuant to Federal Rule of Civil Procedure 12(b)(2) for an  
3 Order dismissing all claims against D-Link Corp. alleged in plaintiff Federal Trade  
4 Commission’s (“FTC”) Complaint, ECF No. 1, with prejudice for lack of personal jurisdiction  
5 over D-Link Corp.

6 Having considered the motion and all supporting and opposition papers, and having heard  
7 the arguments of Plaintiff and Defendant’s counsel, and good cause appearing, IT IS HEREBY  
8 ORDERED that D-Link Corp.’s motion is GRANTED and the FTC’s Complaint is DISMISSED  
9 WITH PREJUDICE as to all claims against D-Link Corp.

10 IT IS SO ORDERED.

11 DATED: \_\_\_\_\_

12 \_\_\_\_\_  
13 Hon. James Donato  
14 United States District Judge  
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