Martha K. Gooding (SBN 101638)
HOWREY LLP
4 Park Plaza, Suite 1700
Irvine, CA 92614
Telephone: (949) 721-6900
Facsimile: (949) 721-6910
Email: goodingm@howrey.com

Jonathan Retsky (*Pro Hac Vice*)
HOWREY LLP
321 North Clark Street, Suite 3400
Chicago, IL 60654
Telephone: (312) 595-1239
Facsimile: (312) 595-2250
Email: retskyj@howrey.com

Gregory J. Commins, Jr. (*Pro Hac Vice*)
Andrew R. Sommer (*Pro Hac Vice*)
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
Telephone: (202) 783-0800
Facsimile: (202) 383-6610
Email: sommera@howrey.com
Email: comminsg@howrey.com

Attorneys for Defendant MOTOROLA, INC.
(additional counsel listed on signature page)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SPH AMERICA, LLC, Plaintiff, vs. ACER, INC., *et al.*, Defendants.	Case No.: 09CV02535 JAH (AJB) **DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1)** DATE: February 7, 2011 TIME: 2:30 PM Courtroom: 11

Defendants Acer, Inc., Acer America Corporation, Dell, Inc., General Dynamics Itronix Corporation, Hewlett-Packard Co., Motorola, Inc., Novatel Wireless, Inc., Novatel Wireless Solutions, Inc., Panasonic Corporation, Panasonic Corporation of North America, Sierra Wireless, Inc., Sierra Wireless America, Inc., Sony Ericsson Mobile Communications AB, Sony Ericsson Mobile Communications (USA), Inc., and UTStarcom, Inc. (collectively "Defendants")[1] move to dismiss this patent infringement action under Rule 12(b)(1) because Plaintiff SPH America LLC ("SPH") does not have standing to sue. Thus, this Court lacks subject matter jurisdiction.

SPH filed this lawsuit against more than 40 defendants, alleging that they infringe five patents related to wireless communication technology.[2] SPH admits, however, that it does not own any of the patents-in-suit; all five patents are owned by the Electronics and Telecommunications Research Institute ("ETRI"), a South Korean non-profit, government-funded research organization. Instead, SPH alleges that it is *effectively* the patent owner because it obtained an exclusive license from ETRI that allegedly gave SPH "all substantial rights" in the patents-in-suit. SPH contends its licensee status gives it standing to bring this action in its own name, without joining ETRI as a plaintiff.

As shown in detail in Defendants' Memorandum in support of this Motion, SPH is wrong. Whether ETRI granted SPH "all substantial rights" to the patents depends on the parties' written agreement and their intentions behind that agreement. Both the terms of the license agreement itself and later written statements by ETRI and SPH describing their respective rights under the agreement show that ETRI retained very substantial rights in the patents and thus did *not* grant SPH "all substantial rights." Because SPH did not obtain "all substantial rights" and it lacks standing to bring suit in its own name. As a result, this Court lacks jurisdiction over this case and, absent ETRI's presence as a plaintiff, the action must be dismissed.

[1] Defendants Fujitsu America, Inc., Fujitsu Ltd., Nokia Corporation, and Nokia Inc. do not join, but do not oppose this motion.

[2] The five patents-in-suit are U.S. Patent Nos. 5,960,029 (the "'029 patent"), 7,443,906 (the "'906 patent"), 7,586,973 (the "'973 patent"), RE 40,253 (the "RE'253 patent), and RE 40,385 (the "RE'385 patent").

Dated: December 9, 2010

RESPECTFULLY SUBMITTED,

HOWREY LLP

By: s/ Martha K. Gooding

Martha K. Gooding (SBN 101638)
HOWREY LLP
4 Park Plaza, Suite 1700
Irvine, CA 92614
Telephone: (949) 721-6900
Facsimile: (949) 721-6910
Email: goodingm@howrey.com

Jonathan Retsky (*Pro Hac Vice*)
HOWREY LLP
321 North Clark Street, Suite 3400
Chicago, IL 60654
Telephone: (312) 595-1239
Facsimile: (312) 595-2250
Email: retskyj@howrey.com

Gregory J. Commins, Jr. (*Pro Hac Vice*)
Andrew R. Sommer (*Pro Hac Vice*)
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
Telephone: (202) 783-0800
Facsimile: (202) 383-6610
Email: sommera@howrey.com
Email: commins g@howrey.com

Christopher L. Kelley (*Pro Hac Vice*)
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, CA 94303
Telephone: (650) 798-3663
Facsimile: (650) 798-3600
Email: kelleyc@howrey.com

Attorneys for Defendant
Motorola, Inc.

Dated: December 9, 2010

ALSTON & BIRD LLP

By: s/ Michael J. Newton
Michael J. Newton (SBN 156225)
ALSTON & BIRD LLP
2200 Ross Avenue, Suite 3601
Dallas, TX 75201-2708
(214) 922-3400
Fax: (214) 922-3899
Email: mike.newton@alston.com

Ross R. Barton (*pro hac vice*)
Alston & Bird LLP
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
(704) 444-1287
Email: ross.barton@alston.com

Attorneys for Defendant Dell Inc.

GREENBERG TRAURIG LLP

By: s/ James W. Soong
James W. Soong (SBN 196092)
GREENBERG TRAURIG LLP
1900 University Avenue 5th Floor
East Palo Alto, CA 94303
Telephone: (650) 328-8500
Facsimile: (650) 328-8508

Attorneys for Defendants Hewlett-Packard Company; Acer America Corp.; Acer Inc.

Dated: December 9, 2010

K&L GATES LLP

By: s/ Michael J. Bettinger

Michael J. Bettinger (SBN 122196)
Timothy Paar Walker (SBN 105001)
Holly Hogan (SBN 238714)
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111-5994
Telephone: (415) 882-8200
Facsimile: (415) 882-8220
mike.bettinger@klgates.com
timothy.walker@klgates.com
holly.hogan@klgates.com

Attorneys for Novatel Wireless, Inc. and Novatel Wireless Solutions, Inc.

Dated: December 9, 2010

QUINN EMANUEL URQUHART & SULLIVAN LLP

By: s/ Kevin P.B. Johnson

Kevin P.B. Johnson (SBN 177129)
QUINN EMANUEL URQUHART & SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100
kevinjohnson@quinnemanuel.com

Counsel for Defendants Sony Ericsson Mobile Communications AB and Sony Ericsson Mobile Communications (USA), Inc.

Dated: December 9, 2010

PROCOPIO, CORY, HARGREAVES & SAVITCH, LLP

By: s/ Frank L. Tobin
Frank L. Tobin
Marsha Amin
PROCOPIO, CORY, HARGREAVES & SAVITCH, LLP
530 B Street
San Diego, CA 92101-4496
Telephone: (619) 238-1900
Facsimile (619) 235-0398

Daniel Ebenstein (*pro hac vice*)
Abraham Kasdan (*pro hac vice*)
Joseph Casino (*pro hac vice*)
David A. Boag (*pro hac vice*)
Amster, Rothstein & Ebenstein LLP
90 Park Avenue
New York, New York 10016
Telephone: (212) 336-8000
Facsimile: (212) 336-8001

Attorneys for Panasonic Corporation and Panasonic Corporation of North America

Dated: December 9, 2010

NIXON PEABODY LLP

By s/ Jennifer Hayes
Christopher L. Ogden (SBN 235517)
Jennifer Hayes (SBN 241533)
NIXON PEABODY LLP
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, California 94306
Telephone: (650) 320-7700
Facsimile: (650) 320-7701
cogden@nixonpeabody.com
jenhayes@nixonpeabody.com

Ronald F. Lopez (SBN 111756)
NIXON PEABODY LLP
One Embarcadero Center, 18th Floor
San Francisco, California 94111-3600
Telephone: (415) 984-8200
Facsimile: (415) 984-8300
rflopez@nixonpeabody.com

Attorneys *for Defendants*
SIERRA WIRELESS, INC.,
SIERRA WIRELESS AMERICA, INC., and
General DYNAMICS ITRONIX CORPORATION

Dated: December 9, 2010

SPOTTS FAIN PC

By: s/ Dana D. McDaniel

Dana D. McDaniel, Esq. (*Pro Hac Vice*)
SPOTTS FAIN PC
411 E. Franklin Street, Suite 600
P.O. Box 1555
Richmond, VA 23218-1555
Telephone: (804) 697-2000
Facsimile: (804) 697-2100
dmcdaniel@spottsfain.com

David S. Richman, Esq. (State Bar No. 94325)
Patricia S. Riordan, Esq. (State Bar No. 187418)
THEODORA ORINGHER MILLER & RICHMAN PC
10880 Wilshire Boulevard, Suite 1700
Los Angeles, California 90024-4101
Telephone: (310) 557-2009
Facsimile: (310) 551-0283
drichman@tocounsel.com
priordan@tocounsel.com

Counsel for Defendant UTSTARCOM, INC.