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July 10, 2006

BY CM/ECF

The Honorable Gregory M. Sleet
United States District Court
844 King Street
Wilmington, DE 19801

Re: Telcordia Techs. Inc. v. Lucent Techs., Inc., C.A. No. 04-875-GMS

Dear Judge Sleet:

Lucent writes to inform the Court that Lucent will not request a stay of Civil Action 04-875 under Section 28 U.S.C. § 1659 in light of Telcordia filing an action before the International Trade Commission ("ITC") on May 15, 2006. The district court action has been pending before the Court since July 2004. Both the Court and Lucent have invested a significant amount of time and resources in this action, including completing fact discovery, conducting a Markman hearing and issuing of a claim construction order. Completion of expert discovery and the beginning of the summary judgment process are less than a month away. Given the advanced stage of this action, the investment by the Court and the parties in resolving this action and the fact that only this Court can resolve all the issues between the parties, Lucent chooses to go forward with this action.[1]

In evaluating whether to stay this action, Lucent asked if Telcordia would maintain its claim based on the '306 patent in the ITC given Telcordia's admission that it cannot establish infringement

[1] Lucent is aware that, in a separate action pending before the Court, Alcatel plans to exercise its right to stay. Given Telcordia's decision, at this late date, to initiate a separate action involving the same patents before the ITC, Lucent understands Alcatel's reasons for not wanting to incur the expense of defending against two actions in two different venues at the same time. Alcatel is also in a different position than Lucent and Cisco because Telcordia is not asserting the '763 patent against Alcatel. Telcordia's decision to file in the ITC has put each of the Defendants in a difficult position – stay the proceedings in this Court or incur the increased expense of litigating in two fora.

under this Court's Markman order.[2] *See Attachment 1.* Telcordia, however, refused to provide a response, instead stating that Telcordia would wait for Lucent's decision regarding a stay in this action before determining whether to proceed in the ITC. *See Attachment 2.* Telcordia's position has it backwards – it is Telcordia's claim in the ITC that creates Lucent's statutory right to stay this action, and Telcordia's failure to answer as to what claims will be pending in the ITC frustrates the process.

Telcordia's refusal to identify whether it will go forward with the '306 patent before the ITC as well as the timing of its filing of the ITC action (shortly after this Court's Markman hearing) suggests that Telcordia filed the parallel ITC action purely for tactical reasons. Telcordia cannot obtain any relief from the ITC that this Court cannot provide and this Court has scheduled trial dates for spring of next year. The ITC cannot provide monetary damages and the only relief it can provide, an exclusion order, may well be mooted as to the '306 and '763 patents because those patents will expire before or shortly after the ITC might issue such an order. The only explanation for Telcordia's actions are that it seeks to ratchet up Defendants' costs by commencing a parallel action and that it seeks to collaterally attack this Court's Markman order in another forum.

For the reasons set forth above, Lucent chooses to go forward with this action and does not request a stay.

Respectfully submitted,

John W. Shaw (ID No. 3362)

JWS/prt
cc: Clerk of the Court (by hand delivery and CM/ECF)
Steven J. Balick, Esquire (by CM/ECF)
Don O. Burley, Esquire (by e-mail)
Steven C. Cherny, Esquire (by e-mail)

[2] Following the Court's Markman order, Telcordia stated that it "cannot prove infringement of any of the accused products of Lucent" under the '306 patent, and Telcordia did not serve an expert report on the '306 patent.