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Federal Trade Commission (FTC)  
Office of the Secretary  
Room H-113 (Annex J)  
600 Pennsylvania Avenue  
NW, Washington, DC 20580  
USA



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November 27, 2013

**CONFIDENTIAL**

**PAE Reports: Paperwork Comment, Project No. P131203**

Dear Sir, dear Madam,

We would like to submit our comments to the FTC regarding the above-mentioned Project in connection with Patent Asserting Entities (PAE). In this respect, we would like to file our entire comments under confidentiality in accordance with the FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, we wish that the name [REDACTED] will not appear publicly in this context.

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[REDACTED] Our direct customers integrate our products into devices which are sold either to consumers or to intermediary customers who integrate these into mobile and handheld consumer devices, as well as cars and industrial systems. In addition, the devices of our customers may be sold through 3<sup>rd</sup> party resellers, all of which are in the following referred to as "End Customer". Our products are used in mass-market location-based applications such as mobile Internet and in-car infotainment systems, point-of-sales terminals, asset tracking devices, fleet management systems, road pricing infrastructure, vehicle recovery systems, and devices for emergency services.

Recently, we have been informed by several customers that many End Customers selling GPRS devices have received a letter from a PAE named GPNE Corp. (hereafter "GPNE": <http://www.gpnecorp.com/index.html>) i) claiming the ownership of 24 issued and pending GPRS patents listed in the letter (however, in GPNE's letter the claims chart of only one patent is attached); ii) informing that many of its past patent litigations were "successfully resolved"; iii) arguing that since these patents are essential to the GPRS standard (so-called "standard essential patents"), the End Customer necessarily uses their patents; and iv) offering to settle at a "preferential rate" to avoid "costly legal entanglements". Typically, GPNE attaches a draft contract to its letters which provides for a lump sum payment without specifying a rate.

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Ultimately, the End Customer will in most cases need to increase its prices to recoup the payments made to GPNE and other PAE's claiming to own GPRS patents.

While we do not contest the necessity of PAEs to be remunerated for the use of valid patents, we do contest the excessive royalty rates requested by GPNE in view of the about thousand patents in the 2G standard and the court decisions defining how royalty rates should be calculated for essential patents:

Two Federal District Courts decisions give useful guidance for the calculation of royalty rates for standard essential patents. In the decisions *Microsoft Corp. v. Motorola Mobility, Inc., et al.* (25 April 2013, Case No. C10-1823JLR, W.D. Wash), and *In re Innovatio IP Ventures LLP* (27 September 2013, Case No. 11 C 9308, N.D. Ill), the royalty rate is calculated on the basis of the smallest salable unit, the chip, taking its average price over the years and declaring the profit margin on the chip to be the range, which can potentially be distributed to patent holders, depending on the quality of their portfolio. In *Innovatio*, the license fees for 19 key patents were determined to be US cent 9.5 per sold unit. In *Microsoft*, the license fees for 11 minor patents were fixed at US cent 3.4 per sold unit.

We estimate that a typical End Customer, such as a reseller, may cumulatively sell anywhere between 500 and 10,000 products containing a [REDACTED] GPRS module.

Thus, if we take the higher of both rates (assuming that 20 GPNE patents are ultimately registered and are each key to the GPRS standard) and an average of 10,000 units sold per End Customer, the total lump sum amount due would be USD 950 (10,000 x USD 9.5 cents). This is a pessimistic scenario calculation because it is likely that the GPRS patents are not each very relevant patents (and thus a lower rate would need to be applied) and may very well not be relevant to our End Customer in view of a recent claim construction decision by a Federal District Court in which 3 of GPNE's patents were declared to apply to pagers only (not to the products sold by our End Customers).

In sum, GPNE requests – b(3):6(f), b(4)

b(3):6(f), [REDACTED] – a royalty rate about 30 times higher than what it can reasonably claim according to court decisions. While we do not know to how many End Customers GPNE has sent its letter, we estimate it to be to [REDACTED]

We hope that this first-hand insight in the business practices of GPNE (which is not an exception) shows how PAEs operate and why PAEs can extract excessive royalties from End Customers. In our view this has two consequences: i) US consumers are obviously harmed, since these cost will ultimately be passed on to them; and ii) the aggressive activity of PAEs in recent years has substantially degraded the attractiveness of the US market for manufacturers of semiconductors.

We would like to reiterate that the name of our company must remain confidential as this would expose our company to claims of other PAEs and the information might be of interest to or abused by our competitors. If you are not able to warrant the confidentiality of our name, we must unfortunately request you to disregard and destroy this letter.

We remain at your disposal for any further request regarding more detailed information in connection with this matter.

Sincerely,

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