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Via EDIS and Overnight Delivery

September 24, 2012

The Honorable Lisa. R. Barton
Acting Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: *Certain Wireless Consumer Electronic Devices and Components Thereof*,
Inv. No. 337-TA-853

Dear Acting Secretary Barton:

Attached please find the Response of Respondents HTC Corporation and HTC America, Inc. to the Complaint in the above-captioned investigation.

In accordance with Commission Rules 201.6 and 210.5 and Order No. 1, Respondents request confidential treatment of the business information contained in Respondents' Confidential Exhibit Nos. 1 and 2.

Confidential Exhibit Nos. 1 and 2 set forth information regarding Respondents' sale and manufacture of the accused products, as required by Commission Rule 210.13(B). This information is proprietary and not publicly available.

Please contact me if you have any questions about this request. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Stephen R. Smith

Stephen R. Smith

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable E. James Gildea
Administrative Law Judge

IN THE MATTER OF:)

CERTAIN WIRELESS CONSUMER)
ELECTRONICS DEVICES AND)
COMPONENTS THEREOF)

Inv. No. 337-TA-853

**RESPONDENTS HTC CORP. AND HTC AMERICA, INC.'S RESPONSE TO
COMPLAINANTS' STATEMENT OF PUBLIC INTEREST AND COMPLAINT UNDER
SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED, AND NOTICE OF
INVESTIGATION**

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Dated: September 24, 2012

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PRELIMINARY STATEMENT

Pursuant to Commission Rule 210.13 (19 C.F.R. § 210.13), Respondents HTC Corporation and HTC America, Inc. (collectively, “HTC” or “Respondents”) submit the following Response to the Statement of Public Interest and Complaint filed by Complainants Technology Properties Limited LLC (“TPL”), Patriot Scientific Corporation (“PTSC”), and Phoenix Digital Solutions LLC (“PDS”) (collectively “Complainants”) on July 24, 2012, as well as to the U.S. International Trade Commission’s (“Commission”) Notice of Institution of Investigation issued on August 21, 2012 and published in the Federal Register on August 24, 2012 (77 Fed. Reg. 51572-73).

HTC denies that it has directly, or through its affiliates or third parties, engaged in acts of unfair competition or otherwise violated section 337 by importing, selling for importation, and/or selling within the United States after importation any product that infringes literally and/or under the doctrine of equivalents, either directly, contributorily, and/or by inducement, any valid and enforceable claim of United States Patent No. 5,809,336 (“the ’336 patent”). HTC further denies that any claims of the ’336 patent are valid and/or enforceable. Except as specifically admitted herein, HTC denies all allegations of the Complaint and Notice of Investigation.

HTC has not had sufficient time and opportunity to collect and review all of the information that may be relevant and necessary to respond to the matters raised in the Complaint. To the extent that any allegations of the Complaint refer to or rely upon such information, HTC is without information sufficient to admit or deny such allegations, and therefore denies the same. Moreover, HTC reserves the right to take such further positions and raise additional defenses based on further information that may be discovered subsequent to the filing of this response.

RESPONSE TO STATEMENT OF PUBLIC INTEREST

To the extent that Complainants' Statement of Public Interest contains factual allegations regarding HTC or HTC products, HTC denies that such factual allegations are entirely accurate or complete. To the extent Complainants' Statement of Public Interest contains factual allegations that do not pertain to HTC or HTC products, HTC lacks sufficient information to form a belief as to the truth of such allegations and therefore denies them.

HTC disputes Complainants' contention that an exclusion order banning importation of the accused HTC products would not implicate significant public health, safety, or welfare concerns in the United States. HTC reserves the right to take discovery, introduce evidence, and make arguments regarding public interest issues throughout the course of this Investigation.

RESPONSE TO COMPLAINT

In the following sections, each heading and paragraph number refers to the respective heading and paragraph number used in the Complaint. Reproducing the headings and paragraph numbers of the Complaint is done only for convenience, and does not indicate any agreement or other endorsement by HTC of such headings and any text of the Complaint. HTC denies any and all allegations made in the Complaint that are not specifically and expressly admitted below.

I. INTRODUCTION

1. HTC admits that Complainants Technology Properties Limited LLC ("TPL"), Patriot Scientific Corporation ("PTSC"), and Phoenix Digital Solutions LLC ("PDS") (collectively, "Complainants") filed their Complaint requesting that the U.S. International Trade Commission institute an investigation pursuant to section 337 of the Tariff Act of 1930, as amended, regarding alleged importation, sale for importation, and/or sale within the United States after importation of certain wireless consumer electronic devices and components thereof that allegedly infringe one or more of the claims of the '336 patent. HTC denies the remaining

allegations in paragraph 1 of the Complaint made with respect to HTC or HTC products. To the extent that paragraph 1 of the Complaint contains allegations regarding entities other than HTC and non-HTC products, HTC lacks sufficient information to form a belief as to the truth of those allegations and therefore denies them.

2. HTC denies that it has engaged in violations of section 337 as alleged in paragraph 2 of the Complaint. HTC denies that it has engaged in any actions to the detriment of TPL or its licensees in the United States with respect to an alleged domestic industry pertaining to the '336 patent. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 of the Complaint and therefore denies them.

3. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint, and, on that basis, denies them.

4. HTC admits that Complainants seek an exclusion order and a cease and desist order, as well as other unspecified relief, relating to allegedly infringing wireless consumer electronic devices. HTC denies that Complainants are entitled to the relief described in paragraph 4 of the Complaint or to any other or different relief.

II. COMPLAINANTS AND OWNERSHIP

5. HTC admits that Exhibit 2-A to the Complaint purports to be a Patent Assignment Abstract of Title for the '336 patent obtained on July 10, 2012, and that Exhibits 2-B through 2-L of the Complaint purport to be recorded assignments for the '336 patent. HTC lacks sufficient information to form a belief as to whether Exhibits 2-A through 2-L are in fact what they purport to be, and on that basis denies Complainants' characterizations of these Exhibits. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 of the Complaint, and therefore denies the allegations.

6. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint, and, on that basis, denies them.

7. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, and, on that basis, denies them.

8. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, and, on that basis, denies them.

9. HTC admits that Complainants purport to describe microprocessor chips as “brains” of most electronic devices throughout the world and microprocessors as being used in everyday items like computers, cell phones, tablets, etc., but denies that such description is entirely accurate or complete. HTC denies the remaining allegations in paragraph 9 of the Complaint.

10. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint, and therefore denies the allegations.

III. THE PROPOSED RESPONDENTS

11. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint, and, on that basis, denies them.

12. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, and, on that basis, denies them.

13. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, and, on that basis, denies them.

14. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and, on that basis, denies them.

15. HTC admits that HTC Corporation is a Taiwanese corporation and that HTC America, Inc. has its principal place of business at 13920 SE Eastgate Way, Suite #200, Bellevue, WA 98005. HTC denies the remaining allegations in paragraph 15 of the Complaint.

16. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and, on that basis, denies them.

17. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, and, on that basis, denies them.

18. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint, and, on that basis, denies them.

19. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint, and, on that basis, denies them.

20. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint, and, on that basis, denies them.

21. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint, and, on that basis, denies them.

22. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and, on that basis, denies them.

23. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint, and, on that basis, denies them.

IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE

24. HTC denies Complainants' characterization of the '336 patent in paragraph 24 of the Complaint. HTC admits that the Complaint provides a general description of certain technical matters in paragraph 24 of the Complaint, but HTC denies that this description is accurate or complete or that the language used therein is entirely correct. HTC lacks knowledge

or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24 of the Complaint, and, on that basis, denies them.

25. HTC admits that Complainants purport to accuse in this investigation certain consumer electronic devices with wireless capabilities. HTC denies that it (or anyone acting on its behalf) imports into or sells within the United States any products that infringe the '336 patent. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 of the Complaint, and, on that basis, denies them.

26. HTC admits that Complainants purport to provide a general description of consumer electronic devices in paragraph 26 of the Complaint, but denies that this description is accurate or complete. Paragraph 26 of the Complaint also contains vague generalizations and subjective statements of opinion that do not constitute factual allegations to which a response is required. To the extent paragraph 26 of the Complaint contains any factual allegations to which a response is required, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them.

27. Paragraph 27 of the Complaint contains vague generalizations and subjective statements of opinion that do not constitute factual allegations to which a response is required. To the extent paragraph 27 of the Complaint contains any factual allegations to which a response is required, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them.

28. HTC denies Complainants' characterization of the '336 patent in paragraph 28 of the Complaint. HTC lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 28 of the Complaint and, on that basis, denies them.

29. HTC denies Complainants' characterization of the '336 patent in paragraph 29 of the Complaint. HTC lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 29 of the Complaint and, on that basis, denies them.

30. HTC denies the allegations in paragraph 30 of the Complaint.

V. PATENT IN SUIT AND NON-TECHNICAL DESCRIPTIONS OF THE INVENTIONS

A. OVERVIEW OF THE ASSERTED '336 PATENT

31. HTC admits that the '336 patent is entitled "High Performance Microprocessor Having Variable Speed System Clock," that it issued on September 15, 1998, and that it names Moore et al. as the inventors. HTC also admits that the '336 patent purports to be the result of U.S. Patent Application No. 08/484,918, filed June 7, 1995. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 of the Complaint, and, on that basis, denies them.

32. HTC admits that the document attached as Exhibit 1 to the Complaint contains two reexamination certificates dated December 15, 2009 and November 23, 2010, respectively. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 of the Complaint, and, on that basis, denies them.

33. HTC admits that the '336 patent has six independent claims and six dependent claims, and that Complainants are asserting one or more of independent claims 1, 6, 10, 11, 13, and 16 and one or more of dependent claims 7, 9, 14, and 15 against certain Respondents named in the Complaint. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 of the Complaint, and, on that basis, denies them.

34. HTC admits that Appendices A, C-E, and G to the Complaint purport to be four copies of the prosecution history of the '336 patent, and that Appendices B, F, and H to the

Complaint purport to be four copies of each reference mentioned in the '336 patent and/or its prosecution history. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 of the Complaint, and, on that basis, denies them.

35. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint, and, on that basis, denies them.

36. HTC admits that Confidential Exhibit 3 to the Complaint purports to be a list of entities licensed under the '336 patent, but denies that the characterizations of those entities set forth in Confidential Exhibit 3 is entirely complete or accurate. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 36 of the Complaint, and, on that basis, denies them.

37. HTC admits that paragraph 37 of the Complaint purports to set forth a table of claims of the '336 patent that Complainants are asserting against Respondents named in the Complaint. To the extent paragraph 37 contains any additional allegations, HTC lacks knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies them.

B. NON-TECHNICAL DESCRIPTION OF THE ASSERTED '336 PATENT

38. HTC admits that Complainants purport to provide a general description of certain technical matters relating to microprocessors in paragraph 38 of the Complaint, but HTC denies that this description is accurate or complete or that the language used therein is entirely correct. HTC denies Complainants' characterization of the '336 patent in paragraph 38 of the Complaint is accurate or complete. HTC denies the remaining allegations in paragraph 38 of the Complaint.

VI. UNLAWFUL AND UNFAIR ACTS OF RESPONDENTS – PATENT INFRINGEMENT OF PROPOSED RESPONDENTS

39. HTC denies that it has engaged in unfair trade practices, and denies that it has manufactured abroad for importation into the United States, imported into the United States, or sold in the United States after importation electronic devices that infringe any claim of the '336 patent. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 39 of the Complaint, and, on that basis, denies them.

40. HTC denies it has imported or sold infringing products in the United States. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 40 of the Complaint, and, on that basis, denies them.

A. Acer

41. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint, and, on that basis, denies them.

42. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint, and, on that basis, denies them.

43. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint, and, on that basis, denies them.

44. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint, and, on that basis, denies them.

45. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint, and, on that basis, denies them.

46. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint, and, on that basis, denies them.

47. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint, and, on that basis, denies them.

B. Amazon.com, Inc.

48. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint, and, on that basis, denies them.

49. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint, and, on that basis, denies them.

50. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint, and, on that basis, denies them.

51. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint, and, on that basis, denies them.

52. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint, and, on that basis, denies them.

53. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Complaint, and, on that basis, denies them.

54. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaint, and, on that basis, denies them.

C. Barnes & Noble, Inc.

55. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Complaint, and, on that basis, denies them.

56. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint, and, on that basis, denies them.

57. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaint, and, on that basis, denies them.

58. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint, and, on that basis, denies them.

59. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Complaint, and, on that basis, denies them.

60. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Complaint, and, on that basis, denies them.

61. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Complaint, and, on that basis, denies them.

D. Garmin

62. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Complaint, and, on that basis, denies them.

63. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint, and, on that basis, denies them.

64. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint, and, on that basis, denies them.

65. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint, and, on that basis, denies them.

66. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint, and, on that basis, denies them.

67. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint, and, on that basis, denies them.

68. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint, and, on that basis, denies them.

E. HTC

69. HTC admits that the Complainants have characterized Thunderbolt and Jetstream as “accused products.” HTC denies the remaining allegations in paragraph 69 of the Complaint.

70. HTC admits that Thunderbolt and Jetstream are assembled in a foreign country, made in Taiwan, imported into the United States, and sold after importation in the United States through third-party distributors. HTC admits that Exhibit 12 to the Complaint includes what purports to be a photograph of an exterior portion of the Thunderbolt that is marked “Made in Taiwan.” HTC admits that Exhibit 13 to the Complaint includes what purports to be a photograph of an exterior portion of the Jetstream that is marked “Made in Taiwan.” HTC denies the remaining allegations in paragraph 70 of the Complaint.

71. HTC denies the allegations in paragraph 71 of the Complaint.

72. HTC denies the allegations in paragraph 72 of the Complaint.

73. HTC denies the allegations in paragraph 73 of the Complaint.

74. HTC denies the allegations in paragraph 74 of the Complaint.

75. HTC admits that Exhibits 12 and 13 include what purport to be claim charts applying the asserted claims 1, 6, 7, 9, 10, 11, 13 and 16 against certain HTC products. HTC denies the remaining allegations in paragraph 75 of the Complaint.

F. Huawei

76. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 of the Complaint, and, on that basis, denies them.

77. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of the Complaint, and, on that basis, denies them.

78. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint, and, on that basis, denies them.

79. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint, and, on that basis, denies them.

80. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint, and, on that basis, denies them.

81. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint, and, on that basis, denies them.

82. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint, and, on that basis, denies them.

G. Kyocera

83. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83 of the Complaint, and, on that basis, denies them.

84. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Complaint, and, on that basis, denies them.

85. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85 of the Complaint, and, on that basis, denies them.

86. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Complaint, and, on that basis, denies them.

87. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 of the Complaint, and, on that basis, denies them.

88. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 of the Complaint, and, on that basis, denies them.

89. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint, and, on that basis, denies them.

H. LG

90. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint, and, on that basis, denies them.

91. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint, and, on that basis, denies them.

92. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint, and, on that basis, denies them.

93. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint, and, on that basis, denies them.

94. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94 of the Complaint, and, on that basis, denies them.

95. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 of the Complaint, and, on that basis, denies them.

96. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint, and, on that basis, denies them.

I. NINTENDO.

97. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Complaint, and, on that basis, denies them.

98. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the Complaint, and, on that basis, denies them.

99. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Complaint, and, on that basis, denies them.

100. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100 of the Complaint, and, on that basis, denies them.

101. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 101 of the Complaint, and, on that basis, denies them.

102. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 of the Complaint, and, on that basis, denies them.

103. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 of the Complaint, and, on that basis, denies them.

J. Novatel Wireless

104. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104 of the Complaint, and, on that basis, denies them.

105. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105 of the Complaint, and, on that basis, denies them.

106. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 106 of the Complaint, and, on that basis, denies them.

107. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 107 of the Complaint, and, on that basis, denies them.

108. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 108 of the Complaint, and, on that basis, denies them.

109. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 109 of the Complaint, and, on that basis, denies them.

110. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110 of the Complaint, and, on that basis, denies them.

K. Samsung

111. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 of the Complaint, and, on that basis, denies them.

112. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Complaint, and, on that basis, denies them.

113. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113 of the Complaint, and, on that basis, denies them.

114. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 of the Complaint, and, on that basis, denies them.

115. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 115 of the Complaint, and, on that basis, denies them.

116. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 116 of the Complaint, and, on that basis, denies them.

117. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117 of the Complaint, and, on that basis, denies them.

L. Sierra Wireless

118. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 118 of the Complaint, and, on that basis, denies them.

119. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 119 of the Complaint, and, on that basis, denies them.

120. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 120 of the Complaint, and, on that basis, denies them.

121. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 121 of the Complaint, and, on that basis, denies them.

122. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 122 of the Complaint, and, on that basis, denies them.

123. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 123 of the Complaint, and, on that basis, denies them.

124. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 124 of the Complaint, and, on that basis, denies them.

M. ZTE

125. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 125 of the Complaint, and, on that basis, denies them.

126. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 126 of the Complaint, and, on that basis, denies them.

127. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127 of the Complaint, and, on that basis, denies them.

128. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 128 of the Complaint, and, on that basis, denies them.

129. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129 of the Complaint, and, on that basis, denies them.

130. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130 of the Complaint, and, on that basis, denies them.

131. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 131 of the Complaint, and, on that basis, denies them.

132. HTC admits that paragraph 132 of the Complaint sets forth a table purporting to summarize claims of the '336 patent that Complainants are asserting against each Respondent. HTC denies the remaining allegations in paragraph 132 of the Complaint.

VII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS

133. HTC denies the allegations in paragraph 133 of the Complaint with respect to HTC. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 133 of the Complaint, and, on that basis, denies them.

VIII. RELATED LITIGATION

A. PENDING AND ONGOING LITIGATION

134. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 134 of the Complaint, and, on that basis, denies them.

135. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 135 of the Complaint, and, on that basis, denies them.

136. HTC admits that on February 8, 2008, HTC filed a declaratory judgment action involving noninfringement and invalidity of the '336 patent, among others, against TPL, PTSC and Alliacense Limited ("Alliacense") in the Northern District of California (Case No. 5:08-cv-00882) ("HTC Action"). HTC admits that an amended complaint was filed on July 10, 2008 and that counterclaims for infringement of the '336 patent, among others not asserted here, were filed

in the declaratory judgment action filed by HTC. HTC denies the remaining allegations in paragraph 136 of the Complaint.

137. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 137 of the Complaint, and, on that basis, denies them.

138. HTC admits the allegations in paragraph 138 of the Complaint with respect to HTC. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 138 of the Complaint, and, on that basis, denies them.

139. HTC admits the allegations in paragraph 139 of the Complaint with respect to HTC. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 139 of the Complaint, and, on that basis, denies them.

140. HTC admits the allegations in paragraph 140 of the Complaint with respect to HTC. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 140 of the Complaint, and, on that basis, denies them.

141. HTC admits the allegations in paragraph 141 of the Complaint with respect to HTC. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 141 of the Complaint, and, on that basis, denies them.

B. TERMINATED LITIGATION

142. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 142 of the Complaint, and on that basis, denies them.

143. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 143 of the Complaint, and on that basis, denies them.

144. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 144 of the Complaint, and on that basis, denies them.

145. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 145 of the Complaint, and on that basis, denies them.

146. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 146 of the Complaint, and on that basis, denies them.

147. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 147 of the Complaint, and on that basis, denies them.

148. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 148 of the Complaint, and on that basis, denies them.

149. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 149 of the Complaint, and on that basis, denies them.

150. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 150 of the Complaint, and on that basis, denies them.

151. HTC admits the allegations in paragraph 151 of the Complaint.

152. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152 of the Complaint, and on that basis, denies them.

153. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 153 of the Complaint, and on that basis, denies them.

154. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 154 of the Complaint, and on that basis, denies them.

155. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 155 of the Complaint, and on that basis, denies them.

IX. DOMESTIC INDUSTRY

156. Paragraph 156 of the Complaint contains legal assertions and conclusions to which no response is required. To the extent paragraph 156 of the Complaint contains factual allegations, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis, denies them.

A. A Domestic Industry for the Asserted Patent Exists as a Result of TPL's Substantial Investments in its MMP Licensing Program.

157. Paragraph 157 of the Complaint contains legal assertions and conclusions to which no response is required. To the extent paragraph 157 of the Complaint contains factual allegations, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis, denies them.

158. HTC admits that Confidential Exhibit 39 to the Complaint purports to be a Declaration of Dwayne Hannah. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 158 of the Complaint, and on that basis, denies them.

159. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 159 of the Complaint, and on that basis, denies them.

160. HTC admits that Confidential Exhibit 39-L to the Complaint, attached to the Declaration of Dwayne Hannah, purports to be a list of licensees to the MMP Portfolio. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 160 of the Complaint, and on that basis, denies them.

161. Paragraph 161 of the Complaint contains legal assertions and conclusions to which no response is required. To the extent paragraph 161 of the Complaint contains factual

allegations, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis, denies them.

162. Paragraph 162 of the Complaint contains legal assertions and conclusions to which no response is required. To the extent paragraph 162 of the Complaint contains factual allegations, HTC denies that the '336 patent or the MMP Portfolio covers any "fundamental microprocessor technology," or that the patent application leading to U.S. Patent No. 5,440,749 (the "'749 patent") or any other patent(s) in the MMP Portfolio is in any way "fundamental." HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis, denies them.

163. HTC admits that the '749 patent and the '336 patent appear to share the same specification and include the same two alleged inventors: Charles H. Moore and Russell H. Fish III. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis, denies them.

164. HTC denies Complainants' characterization of the '336 patent and the referenced "MMP patents" in paragraph 164 of the Complaint. HTC admits that the Complaints purport to provide a general description of certain technical matters in paragraph 164 of the Complaint, but HTC denies that this description is accurate or complete or that the language used therein is entirely correct. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 164 of the Complaint, and on that basis, denies them.

165. Paragraph 165 of the Complaint contains legal assertions and conclusions to which no response is required. HTC admits that Confidential Exhibits 40-47 to the Complaint are claim charts that purport to apply various claims of the '336 patent to various products. HTC

lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 165 of the Complaint, and therefore denies the allegations.

166. HTC admits that Confidential Exhibits 40-42 of the Complaint are claim charts that purport to apply various claims of the '336 patent to various smartphone products. HTC admits that Confidential Exhibits 43-44 of the Complaint are claim charts that purport to apply various claims of the '336 patent to various tablet computer products. HTC admits that Confidential Exhibits 45-47 of the Complaint are claim charts that purport to apply various claims of the '336 patent to various personal computers products. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 166 of the Complaint, and therefore denies the allegations.

167. Paragraph 167 of the Complaint contains legal assertions and conclusions to which no response is required. To the extent paragraph 167 of the Complaint contains factual allegations, HTC lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis, denies them.

B. OnSpec, a Company Funded and Operated by TPL, Developed Products and Technology That Utilized the MMP Patent Portfolio.

168. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 168 of the Complaint, and therefore denies the allegations.

169. To the extent paragraph 169 of the Complaint purports to characterize any HTC products, HTC denies those allegations. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 168 of the Complaint, and therefore denies the allegations.

170. HTC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 170 of the Complaint, and therefore denies the allegations.

171. HTC admits that Confidential Exhibits 39-C through 39-G to the Complaint purport to be claim charts applying various claims of the '336 patent to microprocessor products. HTC admits that Confidential Exhibit 39-H to the Complaint purports to be a list of products that practice the '336 patent. HTC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 171 of the Complaint, and therefore denies the allegations.

HTC denies that there exists a domestic industry with respect to the '336 patent as required under 19 U.S.C. § 1337. HTC denies that Complaints are entitled to any relief in this proceeding.

X. RELIEF REQUESTED

HTC denies that Complainants are entitled to the requested relief in section X (a) through (e) of the Complaint or any other or different relief.

RESPONSE TO NOTICE OF INVESTIGATION

Pursuant to Commission Rule 210.13, HTC responds to the Notice of Investigation issued by the U.S. International Trade Commission on issued on August 21, 2012 and published in the Federal Register on August 24, 2012 (77 Fed. Reg. 51572-73), as follows:

HTC admits that Complainants filed a Complaint on July 24, 2012. HTC admits that the Complaint generally sets forth the allegations summarized in the Notice of Investigation. HTC further admits that Complainants have requested that an investigation be instituted and that, after the investigation, an exclusion order and cease and desist order be issued, as set forth in the Notice of Investigation.

HTC admits that the Commission has instituted an investigation in accordance with the terms of Paragraphs (1) through (3) of the Notice of Investigation. HTC denies that it is or has violated any provision of section 337 of the Tariff Act of 1930, as amended. Specifically, HTC

denies that is engaging or has engaged in any act that would constitute unlawful importation into the United States, sale for importation, or sale within the United States after importation, of certain wireless consumer electronic devices and components thereof. The claims of the '336 patent are not infringed by HTC and are invalid and/or unenforceable, and cannot support any remedy for any alleged infringement pursuant to 19 U.S.C. § 1337. HTC denies that there exists a domestic industry as required under 19 U.S.C. § 1337. HTC denies that Complainants are entitled to any relief in this investigation.

ADDITIONAL INFORMATION REQUIRED UNDER RULE 210.13(B)

By providing the following information, HTC intends only to supply data required by 19 C.F.R. § 210.13(b). HTC specifically denies that any of the information or data supplied below, or in the exhibits accompanying this Response, relates to or supports any allegation of infringement against HTC or any violation of 19 U.S.C. § 1337 by HTC.

1. The total quantities of HTC's imports of the Thunderbolt and Jetstream for calendar years 2011 and 2012 is provided in Confidential Exhibit 1 to this Response.
2. Thunderbolt falls within the following classification of the Harmonized Tariff Schedule of the United States: 8517.12.0050. Jetstream falls within the following classification of the Harmonized Tariff Schedule of the United States: 8517.12.0050.
3. A list of manufacturers and suppliers of the Thunderbolt and Jetstream is set forth in Confidential Exhibit 2.
4. HTC does not have substantial capacity to produce the Thunderbolt and Jetstream in the United States.
5. Purchases of the Thunderbolt and Jetstream in the United States account for a significant percentage of Thunderbolt and Jetstream sales worldwide.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (NON-INFRINGEMENT OF THE '336 PATENT)

1. Although HTC does not bear the burden of proof on this issue, no valid and enforceable asserted claim of the '336 patent is infringed directly or indirectly by any of the products accused of infringement in this investigation. By way of example and without limitation, and subject to further investigation, the accused Thunderbolt and Jetstream do not meet any of the following elements in each of the asserted claims that require either “an entire ring oscillator variable speed system clock in said single integrated circuit,” or “an entire oscillator disposed upon said integrated circuit substrate,” or “an entire variable speed clock disposed upon said integrated circuit substrate.”

HTC is continuing its investigation into the claims of the '336 patent and reserves its right to rely on additional non-infringement grounds.

SECOND AFFIRMATIVE DEFENSE (INVALIDITY OF THE '336 PATENT)

2. Each of the asserted claims of the '336 patent are invalid under Sections 102 and/or 103 of Title 35 of the United States Code as anticipated by and/or obvious in light of the prior art. In particular, the asserted claims of the '336 patent are invalid under §§ 102 and/or 103, based on at least one or more of the following prior art references and/or products, taken alone or in combination:

Patents:

- U.S. Patent No. 5,237,699, Little *et al.*, issued August 17, 1993 (“the '699 patent”).
- U.S. Patent No. 4,931,748, McDermott *et al.*, issued June 5, 1990 (“the '748 patent”).
- U.S. Patent No. 4,763,297, Uhlenhoff, issued August 9, 1988 (“the '297 patent”).

- U.S. Patent No. 4,766,567, Kato, issued August 23, 1988 (“the ’567 patent”).
- Robert C. Stanley, Microprocessors in Brief, IBM J. Res. Develop., Vol. 29, No. 2 at 115-16, March 1985 (“the Microprocessors in Brief Publication”).
- U.S. Patent No. 4,494,021, Bell *et al.*, issued January 15, 1985 (“the ’021 patent”).
- U.S. Patent No. 3,919,695, Gooding, issued November 11, 1975 (“the ’695 patent”).
- U.S. Patent No. 4,443,845, Hamilton *et al.*, issued April 17, 1984 (“the ’845 patent”).
- U.S. Patent No. 4,513,743, van Arragon *et al.*, issued April 30, 1985 (“the ’743 patent”).
- U.S. Patent No. 4,503,857, Boute *et al.*, issued March 12, 1985 (“the ’857 patent”).
- U.S. Patent No. 4,989,175, Boris *et al.*, issued January 29, 1991 (“the ’175 patent”).
- U.S. Patent No. 4,819,164, Branson, issued April 4, 1989 (“the ’164 patent”).

Products:

- The MC68332 and related devices: The MC68332 device and related devices in the same chip family are prior art against the ’336 patent. The MC68332 device was designed from the early 1980s through 1988. Upon information and belief, the first reduction to Silicon of the chip occurred on or around October 18, 1988. Upon information and belief, the MC68332 device is likely to have been a finished design and been in use or on-sale by Motorola in the United States at least to General Motors or a related entity before August 3, 1988. Conception of the relevant elements is likely to have occurred before the conception date of the subject matter of the ’336 patent in the United States or was introduced into the United States, and reasonable diligence is likely to have been used in reducing the MC68332 device to practice, without abandonment, suppression or concealment. Discovery is still ongoing and HTC does not currently possess any of the MC68332 and related devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.

- MC16805H2: Upon information and belief, the Motorola M16805H2 device is likely to have been on sale by Motorola in the United States before August 3, 1988 and is prior art against the '336 patent. Conception of the relevant elements is likely to have occurred before the conception date of the subject matter of the patents-in-suit in the United States or was introduced into the United States, and reasonable diligence is likely to have been used in reducing the MC16805H2 device to practice, without abandonment, suppression or concealment. Discovery is still ongoing and HTC does not currently possess a MC16805H2 device. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- Motorola Pager Chips: Upon information and belief, a number of Motorola pager chips are likely to have been in use or on sale by Motorola in the United States before August 3, 1988 and are prior art against the '336 patent. Conception of the relevant elements is likely to have occurred before the conception date of the subject matter of the patents-in-suit in the United States or was introduced into the United States, and reasonable diligence is likely to have been used in reducing at least one of the relevant Motorola Pagers to practice, without abandonment, suppression or concealment. Discovery is still ongoing and HTC does not currently possess any of the Motorola pager devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- HP Sacajawea: The HP Sacajawea chip is prior art against the '336 patent. Upon information and belief, the Sacajawea chip is likely to have been in use, or on sale in the United States by NEC at least to Hewlett Packard, before August 3, 1988; and is further likely to have been on sale to the general public in the United States in at least one of the HP calculators of the Pioneer line, specifically models HP-14B, HP-22S or HP-32S before Aug. 3, 1988. Conception of the relevant elements is likely to have occurred

before the conception date of the subject matter of the patents-in-suit in the United States or was introduced into the United States, and reasonable diligence is likely to have been used in reducing the HP Sacajawea chip to practice, without abandonment, suppression or concealment. Discovery is still ongoing and HTC does not currently possess any of the HP Sacajawea devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.

- μ PD75008: Upon information and belief, the NEC μ PD75008 device is likely to have been on sale by NEC in the United States before August 3, 1988 and is prior art against the '336 patent. Conception of the relevant elements is likely to have occurred before the conception date of the subject matter of the patents-in-suit in the United States or was introduced into the United States, and reasonable diligence is likely to have been used in reducing the μ PD75008 device to practice, without abandonment, suppression or concealment. Discovery is still ongoing and HTC does not currently possess any of the μ PD75008 devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- Toshiba TLCS47: Upon information and belief, the Toshiba TLCS47 device is likely to have been in use and/or publicly known and/or on sale and/or made by TAEC before the claimed invention of the '336 patent and is prior art against the '336 patent. Discovery is still ongoing and HTC does not currently possess any of the Toshiba TLCS47 devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- TLCS -42, 47, 470 User's Manual, April 1986 ("the TLCS Reference").
- Sharp SM 550 4-bit Microcomputer: Upon information and belief, the Sharp SM 550 4-bit Microcomputer is likely to have been in use and/or publicly known and/or on sale

and/or made by Sharp before the claimed invention of the '336 patent and is prior art against the '336 patent. Discovery is still ongoing and HTC does not currently possess any of the Sharp 550 devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.

- Philips MAB8400: Upon information and belief, the Philips MAB8400 device is likely to have been in use and/or publicly known and/or on sale and/or made by Philips before the claimed invention of the '336 patent and is prior art against the '336 patent. Discovery is still ongoing and HTC does not currently possess any of the Philips MAB8400 devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- TMS370: Upon information and belief, the Texas Instruments TMS370 Microcontroller is likely to have been in use and/or publicly known and/or on sale and/or made by Texas Instruments before the claimed invention of the '336 patent and is prior art against the '336 patent. Discovery is still ongoing and HTC does not currently possess any of the TMS370 devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.
- INMOS T414M Transputer: Upon information and belief, the INMOS T414M Transputer device is likely to have been in use and/or publicly known and/or on sale and/or made by INMOS Limited before the claimed invention of the '336 patent and is prior art against the '336 patent. Discovery is still ongoing and HTC does not currently possess any of the T414M devices. HTC is making good faith efforts to obtain one or more of these devices and reserves the right to supplement its contentions when it has had an opportunity to analyze one or more of these devices.

HTC is continuing its investigation into the invalidity of the '336 patent and reserves its right to rely on additional prior art.

On information and belief, the asserted claims of the '336 patent are also invalid under 35 U.S.C. § 112, first and second paragraphs.

THIRD AFFIRMATIVE DEFENSE
(LACK OF DOMESTIC INDUSTRY)

3. Complainants cannot establish a domestic industry for the '336 patent or that a domestic industry is in the process of being established as required under Section 337(a)(2) and as defined in part by Section 337 (a)(3) of the Tariff Act of 1930, as amended.

FOURTH AFFIRMATIVE DEFENSE
(LICENSE)

4. On information and belief, HTC cannot be held liable for infringement of the '336 patent because the HTC accused products are manufactured under an express and/or implied license from a licensed third party and/or its privies.

FIFTH AFFIRMATIVE DEFENSE
(EXHAUSTION)

5. On information and belief, HTC cannot be held liable for infringement of the '336 patent because Complainants' patent rights are exhausted as to the accused HTC products.

SIXTH AFFIRMATIVE DEFENSE
(STANDING)

6. On information and belief, Complainants do not have standing to enforce the '336 patent against HTC because Complainants do not hold substantial rights to the Asserted Patents sufficient to establish standing.

SEVENTH AFFIRMATIVE DEFENSE
(PROSECUTION ESTOPPEL)

7. Complainants are estopped from construing any claim of the '336 patent to be infringed or have been infringed, either literally or under the doctrine of equivalents, by any method or product manufactured, used, imported, sold or offered for sale by HTC in view of the prior art and because of admissions and statements made to the patent office during prosecution of the applications leading to the issuance of the '336 patent and its divisional application leading to the issuance of U.S. Patent No. 6,598,148 ("the '148 patent").

8. During the prosecution of the '336 patent, the patentee surrendered claim scope to overcome rejections based upon prior art through at least the claim amendments and remarks made on the following dates:

- 04/15/1996 Applicant Arguments/Remarks Made in an Amendment
- 01/13/1997 Applicant Arguments/Remarks Made in an Amendment
- 07/07/1997 Amendment/Req. for Reconsideration after Non-Final Rejection

9. During the reexamination of the '148 patent, the patentee surrendered claim scope to overcome rejections based upon prior art through at least the claim amendments and remarks made on the following date:

- 02/12/2008 Examiner Interview Summary Record (PTOL – 413)

HTC reserves the right to supplement or amend its affirmative defenses based on further investigation and/or discovery.

Dated: September 24, 2012

Respectfully submitted,

/s/ Stephen R. Smith

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*Counsel for Respondents HTC Corporation
and HTC America, Inc.*

**VERIFICATION OF HTC'S RESPONSE TO
COMPLAINT AND NOTICE OF INVESTIGATION**

I, Vincent Lam, Executive Director, Patent Litigation Counsel for HTC America, Inc.,
declare that:

1. I am authorized to make this verification on behalf of Respondents HTC Corporation and HTC America Inc. (collectively, "HTC").

2. I have read HTC's Response to Complainants' Statement of Public Interest and Complaint and Notice of Investigation and the exhibits thereto (the "Response").

3. To the best of my knowledge, information, and belief, formed after a reasonable inquiry with the assistance of HTC employees, the responses and factual statements in the Response:


- a. have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- b. to the extent they deny factual contentions, are warranted on the evidence or reasonably based on a lack of information or belief.

4. The claims and legal contentions in the Response are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

5. The Response is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of this Investigation.

6. I declare under penalty of perjury that the statements contained herein are true and correct.

Dated: September 24, 2012



Vincent Lam
Executive Director, Patent Litigation Counsel
HTC America, Inc.

*In the Matter of Certain Wireless Consumer Electronics Devices and Components
Thereof, Investigation No. 337-TA-853*

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012 copies of **RESPONDENTS HTC CORP. AND HTC AMERICA, INC.'S RESPONSE TO COMPLAINANTS' STATEMENT OF PUBLIC INTEREST AND COMPLAINT UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED, AND NOTICE OF INVESTIGATION** were filed and served upon the following parties as indicated:

The Honorable Lisa R. Barton
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- Via EDIS
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- Via Overnight Delivery
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/s/ Sean Newsam

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