

1 (Counsel listed on signature page)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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TECHNOLOGY PROPERTIES LIMITED
LLC, et al.,

Case No. 3:12-cv-03865-VC

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Plaintiffs,

**DEFENDANTS' CASE
MANAGEMENT STATEMENT**

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v.

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HUAWEI TECHNOLOGIES CO., LTD., et al.,

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Defendants.

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TECHNOLOGY PROPERTIES LIMITED
LLC, et al.,

CASE NO. 3:12-cv-03876-VC

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Plaintiffs,

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v.

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ZTE CORPORATION, et al.,

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Defendants.

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TECHNOLOGY PROPERTIES LIMITED
LLC, et al.,

Case No. 3:12-cv-03877-VC

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Plaintiffs,

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v.

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SAMSUNG ELECTRONICS CO., LTD., et al.,

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Defendants.

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TECHNOLOGY PROPERTIES LIMITED
LLC, et al.,

Plaintiffs,

v.

LG ELECTRONICS, INC., et al.,

Defendants.

Case No. 3:12-cv-03880-VC

TECHNOLOGY PROPERTIES LIMITED
LLC, et al.,

Plaintiffs,

v.

NINTENDO CO., LTD, et al.

Defendants.

Case No. 3:12-cv-03881-VC

1 Pursuant to the Court’s April 14, 2017, order,¹ Defendants Huawei Technologies Co.,
2 Ltd., Huawei Device Co., Ltd., Huawei Device USA, Inc., Futurewei Technologies, Inc., Huawei
3 Technologies USA, Inc., ZTE Corporation, ZTE (USA) Inc., Samsung Electronics Co., Ltd.,
4 Samsung Electronics America, Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., Nintendo
5 Co., Ltd., and Nintendo of America Inc. (collectively, “Defendants”) in the above-titled and
6 numbered civil cases respectfully submit this Joint Case Management Statement.

7 As explained herein, Defendants agree with Plaintiffs that early motions for summary
8 judgment of non-infringement are appropriate. Plaintiffs insist on proceeding with this litigation
9 even though the Federal Circuit largely affirmed this Court’s prior claim construction under
10 which Plaintiffs stipulated to non-infringement. Indeed, the Federal Circuit adopted that prior
11 construction subject only to one “minor modification to the district court’s construction [that]
12 likely does not affect the outcome in this case.” Accordingly, Defendants propose that Plaintiffs
13 serve updated infringement contentions fully explaining their infringement theory under the
14 Federal Circuit’s claim construction and then the parties proceed with immediate summary
15 judgment motions to determine whether Plaintiffs should be permitted to proceed with this case.
16 Defendants’ proposed plan for proceeding in this manner is described herein.

17 **I. CASE HISTORY**

18 Except as expressly noted in this section, Defendants generally agree with Plaintiffs’
19 recitation of the case history and procedural background in their Case Management Statement
20 (“Plaintiffs’ CMC Statement”). As Plaintiffs correctly note, this litigation was stayed in 2012
21 pending completion of the parallel ITC Investigation involving the same parties, the same patents
22 and the same accused products. After a full evidentiary hearing, the accused microprocessors,
23 and products containing the same, were found by the Administrative Law Judge not to infringe
24 the ’336 patent on several independent grounds. This non-infringement determination (and the
25 overall determination that there had been no violation of Section 337 by any Defendants) was
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27 ¹ Dkt. No. 121 in *Technology Properties Ltd., et al. vs. Samsung Electronics Co., Ltd., et al.*, Case
28 No. 12-cv-03877-VC. Unless otherwise stated, all docket references are to this case.

1 affirmed by the Commission on review. Plaintiffs did not appeal the Commission’s decision.

2 Defendants do not agree with Plaintiffs’ characterization of the HTC case filed by TPL in
3 this District against HTC Corporation and HTC America, Inc. The HTC case did not involve any
4 of the defendants in the present actions, did not involve all of the same accused microprocessors,
5 and was tried to the jury in that action under a different construction of the “entire oscillator”
6 claim term. The HTC case settled while on appeal to the Federal Circuit.

7 Finally, Plaintiffs’ recitation of this case history conspicuously omits that after Judge
8 Grewal issued his Claim Construction Report and Recommendation (“Recommendation”) (Dkt.
9 No. 104), Plaintiffs moved to stay the litigation pending their anticipated objection to Judge
10 Grewal’s recommended construction. Dkt. No. 105. In that motion to stay, Plaintiffs agreed that
11 if they filed an objection to the claim construction and this Court “does not reject or materially
12 modify the construction of the term ‘an entire oscillator disposed upon said integrated circuit
13 substrate,’ and thereby accepts the Entire Oscillator Construction” then the parties would request
14 that the Court enter final judgment of non-infringement in favor of Defendants. Dkt. No. 105, at
15 ¶ 5 (emphasis added).

16 Plaintiffs did file a motion seeking a *de novo* determination of the Recommendation (Dkt.
17 No. 107), and this Court subsequently issued its Order adopting Judge Grewal’s claim
18 construction recommendation, over Plaintiffs’ objection, and without any modifications. Dkt.
19 No. 111. Plaintiffs then stipulated that “all of the accused products of all Defendants in this
20 Action do not infringe the asserted claims of the ’336 patent” under the Court’s construction.
21 Dkt. No. 112.

22 **II. IMPACT OF THE FEDERAL CIRCUIT’S DECISION**

23 Contrary to Plaintiffs’ statements, the Federal Circuit did not materially modify the
24 construction of the “entire oscillator” term, stating instead at the conclusion of its opinion that
25 “[a]lthough this minor modification to the district court’s construction likely does not affect the
26 outcome in this case, because the parties stipulated to non-infringement under the district court’s
27 construction, the proper course of action is for us to vacate and remand.” *Tech. Props. Ltd. v.*
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1 *Huawei Techs. Co., Ltd.*, Case Nos. 2016-1306, 2016-1307, 2016-1309, 2016-1310, 2016-1311
 2 (Fed. Cir. March 3, 2017) (emphasis added).

3 Fundamentally, the Federal Circuit agreed with this Court that the proper construction of
 4 the “entire oscillator” claim term must capture both disclaimers made by applicants during
 5 prosecution of the ’336 patent, as shown below:

This Court	Federal Circuit
an oscillator located entirely on the same semiconductor substrate as the central processing unit that	an oscillator located entirely on the same semiconductor substrate as the central processing unit that
does not require a control signal and	does not require a command input to change the clock frequency and
whose frequency is not fixed by any external crystal.	whose frequency is not fixed by any external crystal.

14 The portion of this Court’s construction that states “whose frequency is not fixed by any
 15 external crystal” was left intact by the Federal Circuit, which rejected Plaintiffs’ attempts to
 16 eliminate or modify this portion of the Court’s construction. Nevertheless, Plaintiffs now assert
 17 that even though the Federal Circuit declined to modify this part of the construction, it effectively
 18 did so by explaining what this wording “encapsulates.” Plaintiffs’ CMC Statement, at 5. This is
 19 simply incorrect and appears to be an attempt to resurrect Plaintiffs’ unsuccessful arguments to
 20 the Federal Circuit.

21 The Federal Circuit did slightly modify the other part of the disputed construction,
 22 changing “does not require a control signal” to “does not require a command input to change the
 23 clock frequency.” As the Federal Circuit correctly suggested, this modification is minor, does not
 24 affect the outcome in this case, and provides no basis to assert infringement in light of the
 25 undisputed operation of the accused products.

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1 **III. PLAN FOR FURTHER PROCEEDINGS**

2 The parties appear to agree that the best approach to moving this case forward is to stay
3 discovery and address non-infringement in early motions for summary judgment. Such an
4 approach is warranted in light of: (1) Plaintiffs' prior stipulation to no infringement under a claim
5 construction which is not materially different than the present construction; (2) the fact that the
6 parties have already conducted significant discovery of relevant facts (including the exhaustive
7 record from the ITC proceedings); and (3) Plaintiffs' stated willingness to work in good faith to
8 stipulate to uncontroverted facts.

9 As noted in the proposed schedule below, Defendants also believe that Plaintiffs should
10 first serve amended infringement contentions that specifically address the Federal Circuit's
11 modified construction in accordance with Patent Local Rule 3-1. This is necessary because
12 Plaintiffs' current contentions cannot be correct under the Court's original construction given the
13 stipulated judgment of non-infringement, and because such contentions do not explain how the
14 accused products can possibly infringe under the current, slightly modified construction.
15 Plaintiffs appear to recognize that such amended contentions are appropriate. Plaintiffs' CMC
16 Statement, at 9.

Event	Defendants' Proposed Date
Plaintiffs serve amended infringement contentions based on modified construction	June 16, 2017
Last day for Defendants to file opening summary judgment brief(s)	August 1, 2017
Last day for Plaintiffs to file opposition brief(s)	August 21, 2017 (21 days after opening)
Last day for Defendants to file reply summary judgment brief(s)	September 5, 2017 (14 days after opposition)
Summary Judgement hearing	September 19, 2017 (14 days after Reply brief or later at the Court's convenience)

24 Alternatively, if the Court is not inclined to stay discovery and entertain early motions for
25 summary judgment of non-infringement, Defendants request that Plaintiffs' proposed schedule be
26 modified in two major respects.

27 First, Plaintiffs' proposed schedule does not include a deadline by which Plaintiffs must
28 serve amended infringement contentions. Such amended contentions are necessary even without

1 summary judgment motions for the reasons stated above. Furthermore, Defendants need time to
 2 evaluate the sufficiency of any amended contentions given Plaintiffs' history of inadequate
 3 infringement contentions. *See* Dkt. No. 104 (12-cv-3880) (granting-in-part motions to strike
 4 infringement contentions and ordering service of amended contentions).

5 Second, Plaintiffs' proposed schedule includes too much time for additional fact
 6 discovery. When Judge Grewal issued his claim construction and the parties stipulated to non-
 7 infringement, there were only approximately two weeks of fact discovery remaining in the
 8 schedule. Yet Plaintiffs propose five additional months of fact discovery, which is an
 9 unnecessarily long time to wrap up the remaining depositions. Six weeks would be sufficient to
 10 conclude fact discovery after Plaintiffs serve adequate amended infringement contentions
 11 disclosing any new infringement theories or evidence in light of the Federal Circuit's
 12 construction. In this regard, Plaintiffs' primary justification for their proposal "is that
 13 rescheduling all of the depositions will take time." Plaintiffs' CMC Statement, at 9. However,
 14 discussions about scheduling can begin while Plaintiffs are preparing their amended infringement
 15 contentions and be finalized if there are no disputes about their sufficiency. Although it does not
 16 appear Plaintiffs contend otherwise, Defendants also seek the Court's confirmation that no new
 17 discovery can be served by the parties. The parties already have conducted extensive discovery
 18 and only additional supplementation of discovery responses pursuant to Fed. R. Civ. P. 26(e) is
 19 warranted.

20 In view of these concerns, Defendants propose the following case schedule should the
 21 Court not grant Defendants' request to file early summary judgment motions:

Event	Defendants' Proposal
Plaintiffs serve amended infringement contentions based on modified construction	June 16, 2017
Fact discovery resumes if adequate contentions served (limited to completing discovery outstanding at time of Stay, no new written discovery or deposition notices may be served)	August 4, 2017
Fact discovery cut-off	September 15, 2017
Opening expert reports due	October 17, 2017

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 DEFENDANTS' CASE MANAGEMENT STATEMENT
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Event	Defendants' Proposal
Rebuttal expert reports due	November 2, 2017
Close of expert discovery	December 18, 2017
Last day to file summary judgment motions	January 8, 2018
Summary Judgment hearing	At the Court's convenience after February 26, 2018

Dated: May 16, 2017

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DEFENDANTS' CASE MANAGEMENT STATEMENT
 Case Nos.: 3:12-CV-03865; -03876; -03877; -03880; -03881

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ATTESTATION

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I, Timothy C. Bickham, am the ECF User whose ID and password are being used to file Defendants' Case Management Statement. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatories listed above have read and approved the filing of this brief.

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2017, I caused the foregoing document to be served on counsel of record via the Court's CM/ECF system. Dated: May 16, 2017

/s/ Timothy C. Bickham
Timothy C. Bickham