I	Case5:08-cv-00882-PSG Do	cument609	Filed09/21/13	Page1 of 3
1	COOLEY LLP HEIDI L. KEEFE (178960) (hkeefe	@cooley.com)		
2	MARK R. WEINSTEIN (193043) (1	nweinstein@c	cooley.com)	
3	RONALD S. LEMIEUX (120822) (KYLE D. CHEN (239501) (kyle.che	en@cooley.co	m)	
4	Five Palo Alto Square, 4th Floor 3000 El Camino Real			
5	Palo Alto, California 94306-2155 Telephone: (650) 843-5000			
6	Facsimile: (650) 857-0663			
7	STEPHEN R. SMITH (<i>pro hac vice</i>) One Freedom Square) (stephen.smi	th@cooley.com)	
8	Reston Town Center 11951 Freedom Drive			
9	Reston, VA 20190-5656 Telephone: (703) 456-8000			
10	Facsimile: (703) 456-8100			
11	Attorneys for Plaintiffs HTC CORPORATION and			
12	HTC AMERICA, INC.			
13	UNITE	D STATES D	ISTRICT COUR	T
14	NORTHE	ERN DISTRIC	T OF CALIFOR	NIA
15		SAN JOSE I	DIVISION	
16			N. 5.00	0000 000
17	HTC CORPORATION and HTC AMERICA, INC.,		se No. 5:08-cv-0	
18	Plaintiffs,			b. 5:08-CV-00877 PSG]
19	v.		MERGENCY M LARIFICATION	OTION FOR N OF ORDER ON
20	TECHNOLOGY PROPERTIES			JURY INSTRUCTIONS
	LIMITED, PATRIOT SCIENTIFIC CORPORATION and ALLIACENS	E Co	mplaint Filed:	February 8, 2008
21	LIMITED,	Tr	ial Date:	September 23, 2013
22	Defendants.	Da	tte: Septemb me: 9:00 a.m	per 23, 2013
23		Pla	ace: Courtroo	om 5, 4th Floor ul S. Grewal
24		5 00	uge. 11011. 1 a	ur 5. Grewar
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	Case No. 5:08-cy-00882 PSG			EMERGENCY MOTION FO

1	NOTICE OF MOTION AND MOTION	
2	PLEASE TAKE NOTICE that Plaintiffs HTC Corporation and HTC America, Inc.	
3	(collectively "Plaintiffs") move, on an emergency basis, pursuant to Civil Local Rules 6-3 and 7-	
4	11, this Court for a clarification of the Court's Order regarding Defendants' Motion for an	
5	Addendum to Jury Instructions. This Motion is based on the Memorandum of Points and	
6	Authorities set forth below, the accompanying Declaration of Kyle Chen, and such other matters	
7	as may be presented at the hearing on Plaintiffs' motion and allowed by the Court.	
8	Plaintiffs notified Defendants' counsel on September 21, 2013, that Plaintiffs intended to	
9	file this motion and asked for a prompt response on whether Defendants opposed. Defendants did	
10	not respond, and Plaintiffs were not able to reach a resolution.	
11	MEMORANDUM OF POINTS AND AUTHORITIES	
12	To avoid confusing the jury, Plaintiffs request the Court add the underlined text below to	
13	the jury instructions to clarify <i>which</i> signal must exclude the use of an external clock:	
14	The court's final jury instructions will instruct the jury that the terms	
15 16	"entire ring oscillator variable speed system clock" (in claims 1 and 11), "entire oscillator" (in claims 6 and 13), and "entire variable speed clock" (in claims 10 and 16) are properly understood to exclude any external clock used to generate <u>the</u> signal <u>used to clock the CPU</u> .	
17	(Dkt. No. 607 at 1; footnote removed, additional text emphasized.)	
18	The additional phrase is necessary to prevent jury confusion resulting from the large	
19	number of other signals that will be discussed in the case, such as the clock used to generate a	
20	signal that drives the "I/O interface." (See '336 Patent at Fig. 17.) Although the Court's Order on	
21	Summary Judgment (Dkt. No. 585) makes clear that the relevant signal is the one that clocks the	
22	CPU, the jury is unlikely to know this from the instruction as it stands (see, e.g., id. at 4;	
23	emphasis added):	
24	The '336 patent issued on September 15, 1998 and describes a	
25	microprocessor with an internal variable speed <u>clock, or oscillator, that</u> drives the processor's central processing unit ("CPU"). Traditional	
26	microprocessors use external, fixed speed crystals to clock the CPU.	
27	TPL does not dispute that the relevant signal is the signal used to actually clock the CPU.	
28	In its Opposition to HTC's Motion for Summary Judgment of Non-infringement, TPL said:	
	Case No. 5:08-cv-00882 PSG 2. EMERGENCY MOTION FOR ADDENDUM TO JURY INSTRUCTIONS	

	Case5:08-cv-00882-PSG Document60	09 Filed09/21/13 Page3 of 3
1	HTC's first argument on summa Judge Ware's construction of th	ary judgment asks the Court reconsider e "entire" phrases for each of the
2	independent claims of the '336 p	patent. These phrases relate to the "that is used to clock the CPU.
3	(Dkt. No. 470 at 5; emphasis added.) In TPL's	
4	Because the ring oscillator is fa	abricated on the same silicon die as the
5	<u>CPU that it clocks</u> , both the rin	g oscillator and the CPU will be due to changes in process, voltage and
6	temperature parameters—the so	
7	(Dkt. No. 529 at 2; emphasis added.)	
8	For these reasons, Plaintiffs ask the Cou	art to change "a" to "the" and add the phrase "used
9	to clock the CPU" to the end of the additional j	ury instruction provided in the Court's Order at
10	Docket No. 607.	
11		
12	Dated: September 21, 2013	Respectfully submitted,
13		COOLEY LLP HEIDI L. KEEFE
14		MARK R. WEINSTEIN RONALD S. LEMIEUX
15		STEPHEN R. SMITH KYLE D. CHEN
16		By: <u>/s/ Kyle D. Chen</u>
17		Attorneys for HTC CORPORATION and HTC AMERICA, INC.
18		IIIC AMERICA, INC.
19	398110 v3/CO	
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	Case No. 5:08-cv-00882 PSG	3. EMERGENCY MOTION FOR ADDENDUM TO JURY INSTRUCTIONS

	Case5:08-cv-00882-PSG Document6	09-1 Filed09/21/13 Page1 of 2
1 2	COOLEY LLP HEIDI L. KEEFE (178960) (hkeefe@cooley MARK P. WEINSTEIN (102042) (mugingte	.com)
	MARK R. WEINSTEIN (193043) (mweinste RONALD S. LEMIEUX (120822) (rlemieux	@cooley.com)
3	KYLE D. CHEN (239501) (kyle.chen@coole Five Palo Alto Square, 4th Floor	ey.com)
4	3000 El Camino Real Palo Alto, California 94306-2155	
5	Telephone: (650) 843-5000 Facsimile: (650) 857-0663	
6	STEPHEN R. SMITH (pro hac vice) (stephe	n.smith@cooley.com)
7	One Freedom Square Reston Town Center	
8	11951 Freedom Drive Reston, VA 20190-5656	
9	Telephone: (703) 456-8000 Facsimile: (703) 456-8100	
10	Attorneys for Plaintiffs	
11	HTC CORPORATION and HTC AMERICA, INC.	
12		
13	UNITED STAT	ES DISTRICT COURT
14	NORTHERN DIS	TRICT OF CALIFORNIA
15	SAN JO	DSE DIVISION
16		
17 18	HTC CORPORATION, HTC AMERICA, INC.,	Case No. 5:08-cv-00882 PSG
	Plaintiffs,	
19	v.	DECLARATION OF KYLE D. CHEN IN SUPPORT OF EMERGENCY MOTION
20	TECHNOLOGY PROPERTIES	FOR CLARIFICATION OF ORDER RE ADDENDUM TO JURY INSTRUCTIONS
21	LIMITED, PATRIOT SCIENTIFIC CORPORATION, and ALLIACENSE	Complaint Filed: February 8, 2008
22	LIMITED,	Trial Date: September 23, 2013
23	Defendants.	
24		
25	L Kulo D. Chan. declares	
26	I, Kyle D. Chen, declare:	e of Coolers IID according this of the Distriction
27		m of Cooley LLP, counsel in this action for Plaintiffs
28 Cooley LLP	HIC Corporation and HIC America, Inc.	(collectively "HTC"). I make this declaration in
Attorneys At Law Palo Alto	Case No. 5:08-cv-00882 PSG	CHEN DECL. ISO OMNIBUS MOTION

Case5:08-cv-00882-PSG Document609-1 Filed09/21/13 Page2 of 2

1	support of Plaintiffs' Emergency Motion for Addendum to Jury Instructions ("Motion"). I have
2	personal knowledge based on information provided to me of the facts contained within this
3	declaration, and if called as a witness, could testify competently to the matters contained herein.
4	2. Prior to submitting its Motion, on September 21, 2013, Plaintiffs sent an email to
5	Defendants' counsel, including the proposed Motion and asking Defendants to respond by 6:00
6	pm on whether they opposed the Motion. The Defendants did not respond by that time.
7	Accordingly, the parties were unable to reach a stipulation pursuant to Local Rule 7-11.
8	
9	I declare under penalty of perjury that to the best of my knowledge the foregoing is true
10	and correct. Executed on September 21, 2013 in Palo Alto, California.
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12	<u>/s/ Kyle D. Chen</u> Kyle D. Chen
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COOLEY LLP Attorneys At Law Palo Alto	Case No. 5:08-cv-00882 PSG 2. CHEN DECL. ISO EMERGENCY MTN. FOR CLARIFICATION OF ORDER RE JURY INSTRUCTIONS

I	Case5:08-cv-00882-PSG Docu	Iment609-2 Filed09/21/13 Page1 of 2
1	COOLEY LLP	(accless com)
2	HEIDI L. KEEFE (178960) (hkeefe@ MARK R. WEINSTEIN (193043) (m	weinstein@cooley.com)
3	RONALD S. LEMIEUX (120822) (rl KYLE D. CHEN (239501) (kyle.chen	emieux@cooley.com) i@cooley.com)
4	Five Palo Alto Square, 4th Floor 3000 El Camino Real	
5	Palo Alto, California 94306-2155 Telephone: (650) 843-5000	
6	Facsimile: (650) 857-0663	
7	STEPHEN R. SMITH (<i>pro hac vice</i>) One Freedom Square	(stephen.smith@cooley.com)
8	Reston Town Center 11951 Freedom Drive	
9	Reston, VA 20190-5656 Telephone: (703) 456-8000	
10	Facsimile: (703) 456-8100	
11	Attorneys for Plaintiffs HTC CORPORATION and HTC AMERICA, INC.	
12		
13	UNITED	O STATES DISTRICT COURT
14	NORTHEF	RN DISTRICT OF CALIFORNIA
15		SAN JOSE DIVISION
16	HTC CORPORATION and HTC AMERICA, INC.,	Case No. 5:08-cv-00882 PSG
17		[Related to Case No. 5:08-cv-00877 PSG]
18	Plaintiffs,	[PROPOSED] ORDER GRANTING
19	V.	EMERGENCY MOTION FOR CLARIFICATION OF ORDER ON
20	TECHNOLOGY PROPERTIES LIMITED, PATRIOT SCIENTIFIC	ADDENDUM TO JURY INSTRUCTIONS
21	CORPORATION and ALLIACENSE LIMITED,	Complaint Filed: February 8, 2008
22	Defendants.	Trial Date: September 23, 2013
23		Date: September 23, 2013 Time: 9:00 a.m.
24		Place: Courtroom 5, 4th Floor Judge: Hon. Paul S. Grewal
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	Case No. 5:08-cv-00882 PSG	[PROPOSED] ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION FOR CLARIFICATION OF J.I. ORDER

Case5:08-cv-00882-PSG Document609-2 Filed09/21/13 Page2 of 2

1	Having considered Defendants' Emergency Motion for Clarification of the Order of
2	Addendum to the Joint Proposed Jury Instructions, the record in this case and all related facts and
3	circumstances, and good cause appearing therefor, IT IS HEREBY ORDERED THAT:
4	The court's final jury instructions will instruct the jury that the terms "entire ring
5	oscillator variable speed system clock" (in claims 1 and 11), "entire oscillator" (in claims 6 and
6	13), and "entire variable speed clock" (in claims 10 and 16) are properly understood to exclude
7	any external clock used to generate the signal used to clock the CPU.
8	IT IS SO ORDERED.
9	II IS SO ORDERED.
10	Dated:, 2013
11	<i>Datea</i> , 2015
12	Hon. Paul S. Grewal United States Magistrate Judge
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28	Case No. 5:08-cv-00882 PSG 2. [PROPOSED] ORDER GRANTING CLARIFICATION OF J.I. ORDER