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Attorneys for Plaintiffs
11 HTC CORPORATION and
HTC AMERICA, INC.
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 HTC CORPORATION and HTC
17 AMERICA, INC.,
18 Plaintiffs,
19 v.
20 TECHNOLOGY PROPERTIES
LIMITED, PATRIOT SCIENTIFIC
21 CORPORATION and ALLIACENSE
LIMITED,
22 Defendants.
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Case No. 5:08-cv-00882 PSG
[Related to Case No. 5:08-cv-00877 PSG]

**EMERGENCY MOTION FOR
CLARIFICATION OF ORDER ON
TPL'S MIL NO. 1**

Complaint Filed: February 8, 2008
Trial Date: September 23, 2013

Date: September 20, 2013
Time: 9:30 a.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewal

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 *in Limine* on
5 references to the co-pending ITC Investigation.

6 This Motion is based on the Memorandum of Points and Authorities set forth below, the
7 accompanying Declaration of Kyle Chen, and such other matters as may be presented at the
8 hearing on Plaintiffs' motion and allowed by the Court.

9 Plaintiffs notified Defendants' counsel on September 18, 2013, that Plaintiffs intended to
10 file this motion and asked for a prompt response on whether Defendants opposed. Defendants
11 and Plaintiffs were not able to reach a resolution.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 In light of the Court's Order (Dkt. No. 585), in which the Court stated that it "agrees with
14 HTC that favorable court rulings can support the objective reasonableness of its non-infringement
15 positions," (*id.* at 13), Plaintiffs move the Court for a clarification of its ruling on Defendants'
16 Motion in Limine No. 1 (Dkt. No. 564.). In that ruling, the Court granted Defendants' motion to
17 exclude evidence of the co-pending ITC investigation.

18 Accordingly, Plaintiffs move the Court to clarify its earlier ruling and order that if
19 Defendants choose to pursue a claim of willful infringement, Plaintiffs will be able to introduce
20 evidence of ITC Investigation No. 337-TA-853 for the purpose of rebutting the Defendants'
21 claim.

22 Dated: September 18, 2013

Respectfully submitted,

23 COOLEY LLP
24 HEIDI L. KEEFE
25 MARK R. WEINSTEIN
26 RONALD S. LEMIEUX
STEPHEN R. SMITH
KYLE D. CHEN

By: /s/ Kyle D. Chen

27 397917

Attorneys for HTC CORPORATION and
28 HTC AMERICA, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HTC CORPORATION, HTC AMERICA,
INC.,

Plaintiffs,

v.

TECHNOLOGY PROPERTIES
LIMITED, PATRIOT SCIENTIFIC
CORPORATION, and ALLIACENSE
LIMITED,

Defendants.

Case No. 5:08-cv-00882 PSG

(Related to Case Nos. 5:08-cv-00877 PSG)

**DECLARATION OF KYLE D. CHEN IN
SUPPORT OF EMERGENCY MOTION
FOR CLARIFICATION OF ORDER ON
TPL'S MIL NO. 1**

Complaint Filed: February 8, 2008
Trial Date: September 23, 2013

I, Kyle D. Chen, declare:

1. I am an attorney at the law firm of Cooley LLP, counsel in this action for Plaintiffs
HTC Corporation and HTC America, Inc. (collectively "HTC"). I make this declaration in

1 support of Plaintiffs' Emergency Motion for Clarification of Order on TPL's MIL No. 1
2 ("Motion"). I have personal knowledge based on information provided to me of the facts
3 contained within this declaration, and if called as a witness, could testify competently to the
4 matters contained herein.

5 2. Prior to submitting its Motion, on September 18, 2013, Plaintiffs sent an email to
6 Defendants' counsel, including the proposed Motion and asking whether Defendants opposed the
7 Motion. The Defendants opposed the Motion. Accordingly, the parties were unable to reach a
8 stipulation pursuant to Local Rule 7-11.

9
10 I declare under penalty of perjury that to the best of my knowledge the foregoing is true
11 and correct. Executed on September 18, 2013 in Palo Alto, California.

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13 /s/ Kyle D. Chen

14 Kyle D. Chen
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Case No. 5:08-cv-00882 PSG
[Related to Case No. 5:08-cv-00877 PSG]
**[PROPOSED] ORDER GRANTING
EMERGENCY MOTION FOR
CLARIFICATION OF ORDER ON TPL'S
MIL NO. 1**
Complaint Filed: February 8, 2008
Trial Date: September 23, 2013
Date: September 20, 2013
Time: 9:30 a.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewal

1 Having considered Defendants' Emergency Motion for Clarification of the Court's Order
2 on Defendants' Motion *in Limine* No. 1 Regarding Prior Litigation, the record in this case and all
3 related facts and circumstances, and good cause appearing therefor, IT IS HEREBY ORDERED
4 THAT if Defendants pursue a claim of willful infringement, Plaintiffs will be able to introduce
5 evidence of ITC Investigation No. 337-TA-853.

6 IT IS SO ORDERED.

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8 Dated: _____, 2013

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Hon. Paul S. Grewal
United States Magistrate Judge
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