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

19 HTC CORPORATION, HTC AMERICA,
 20 INC.,

21 Plaintiffs,

22 v.

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

25 Defendants.

Case No. 5:08-cv-00882 PSG

**EMERGENCY MOTION FOR LIMITING
 INSTRUCTION**

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

Date: September 23, 2013
 Time: 9:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that Defendants Technology Properties Ltd., Patriot Scientific Corp. and Alliacense Ltd. (collectively the “TPL”) move this Court, on an emergency basis, pursuant to Civil Local Rules 6-3 and 7-11, for a jury instruction limiting the use of evidence relating to prior disputes among the defendants.

This Motion is based on the Memorandum of Points and Authorities set forth below and such other matters as may be presented at the hearing on this Motion and allowed by the Court.

The parties met and conferred regarding the content of this motion on September 22, 2013 and were unable to resolve the issues presented herein. Plaintiffs oppose this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

On September 6, 2013, this Court issued an Order on Motions in Limine (Dkt. No. 564). One of the motions addressed in that Order was TPL’s motion to exclude any references to prior disputes among the defendants. TPL argued that such evidence would be unfairly prejudicial, while HTC contended that the evidence was relevant to damages – specifically, to a hypothetical negotiation between the parties under the *Georgia-Pacific* factors. Order on Motions in Limine (Dkt. No. 564), at 3. In ruling on TPL’s motion, the Court agreed that “evidence of litigation among Defendants could weaken TPL’s relative bargaining power vis-à-vis HTC, even as it recognizes that unfair prejudice may result from admission of the evidence.” *Id.* Nevertheless, the Court found that, on balance, “the resulting unfair prejudice and confusion of the evidence would not substantially outweigh the probative value of the evidence” and, accordingly, denied TPL’s motion to exclude such evidence. *Id.* However, to mitigate any potential unfair prejudice, the Court invited TPL “to offer a limiting instruction under Rule 105 for the court to give at an appropriate time during trial.” *Id.*

In light of the Court’s invitation, TPL offers the following proposed instruction to be given in the event HTC offers evidence regarding prior disputes among the defendants:

I have allowed evidence of prior disputes between the defendants because HTC believes it is relevant to the price of the license agreement that would have been negotiated between TPL and HTC. Should you find the evidence relevant to that hypothetical negotiation, you may consider this evidence for that purpose only. The fact that I have permitted HTC

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to present this evidence should not should not be taken as an indication that I have a view regarding whether or not it bears upon that hypothetical negotiation and it may not be used by you in your determination of any other fact in this case.

I want to specifically caution you that the existence of any prior disputes between the defendants does not indicate wrongdoing by any of them or imply that there is any dissention among the defendants today. The prior disputes have been resolved, and they should in no way color your perception of any party to this case.

The proposed instruction properly limits the use of the proffered evidence while attempting to mitigate any resulting unfair prejudice. Accordingly, TPL hereby moves the Court to approve the proposed limiting instruction and to so instruct the jury in the event HTC offers evidence of prior disputes among the defendants.

Dated: September 23, 2013

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

17 HTC CORPORATION and HTC)
AMERICA, INC.,)
18)
Plaintiffs,)
19)
v.)
20)
TECHNOLOGY PROPERTIES LIMITED,)
21 PATRIOT SCIENTIFIC CORPORATION)
and ALLIACENSE LIMITED,)
22)
Defendants.)
23)

Case No. 5:08-cv-00882 PSG

**[PROPOSED] ORDER GRANTING
EMERGENCY MOTION FOR
LIMITING INSTRUCTION**

Date: September 23, 2013
Time: 9:00 a.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewa;

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1 Having considered Defendants' Emergency Motion for Limiting Instruction, the record in
2 this case and all related facts and circumstances, and good cause appearing therefor, IT IS
3 HEREBY ORDERED THAT:

4 If and when HTC offers evidence of prior disputes among the defendants, the Court will
5 read the following limiting instruction to the jury:

6 I have allowed evidence of prior disputes between the defendants because HTC believes it
7 is relevant to the price of the license agreement that would have been negotiated between
8 TPL and HTC. Should you find the evidence relevant to that hypothetical negotiation, you
9 may consider this evidence for that purpose only. The fact that I have permitted HTC to
10 present this evidence should not be taken as an indication that I have a view
11 regarding whether or not it bears upon that hypothetical negotiation and it may not be used
12 by you in your determination of any other fact in this case.

13 I want to specifically caution you that the existence of any prior disputes between the
14 defendants does not indicate wrongdoing by any of them or imply that there is any
15 dissention among the defendants today. The prior disputes have been resolved, and they
16 should in no way color your perception of any party to this case.

17 I
18 T IS SO ORDERED.

19 Dated: _____, 2013

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Hon. Paul S. Grewal
United States Magistrate Judge