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HTC CORPORATION AND HTC AMERICA, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

12 HTC CORPORATION and HTC
13 AMERICA, INC.,

14 Plaintiffs,

15 v.

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

18 Defendants.

Case No. 5:08-cv-00882 PSG

[Related to Case No. 5:08-cv-00877 PSG]

**HTC CORPORATION AND HTC
AMERICA, INC.’S STATEMENT IN
RESPONSE TO DEFENDANTS’ MOTION
UNDER CIVIL LOCAL RULES 6-3 AND
7-11 TO CONTINUE TRIAL DATE AND
CORRESPONDING DATES**

Complaint Filed: February 8, 2008
Trial Date: June 24, 2013

21 Plaintiffs HTC Corporation and HTC America, Inc. (“HTC”) respectfully submit this
22 response to Defendants’ Motion Under Civil Local Rules 6-3 and 7-11 To Continue Trial Date
23 and Corresponding Dates (Dkt. No. 413). HTC supports a continuance of the currently-
24 scheduled trial date of June 24, 2013. HTC does not believe, however, that a continuance of pre-
25 trial dates is necessary or warranted.

26 **A. RELEVANT PROCEDURAL HISTORY**

27 TPL’s motion recites a distorted view of the procedural history of this case in an attempt
28 to blame HTC for the long pendency of this case, which TPL somehow believes supports its

1 request for a further delay of all dates.¹ (TPL’s Motion, Dkt. No. 413 at 2-4.) But the long
2 pendency of this case was primarily attributable to TPL’s forum shopping conduct early in this
3 litigation, and to the two judicial reassignments that either prevented or interrupted the
4 completion of claim construction proceedings.

5 When this case was first filed, TPL desperately sought to move it to the Eastern District
6 of Texas through the filing of a motion to dismiss or to transfer and then a motion for
7 reconsideration, and also the filing of several duplicative suits in the Eastern District of Texas.
8 With respect to reexaminations, the stay in this case lasted only eight months, during which time
9 TPL amended some of its asserted claims at the USPTO, thus proving that the short stay granted
10 by Judge Fogel was well justified.² (*See* Dkt. Nos. 131, 148.) This case has chiefly been
11 delayed due to being reassigned twice. (TPL’s Motion, Dkt. No. 413 at 2.) HTC had no role in
12 these reassignments or the scheduling disruptions caused by them.

13 **B. HTC SUPPORTS A CONTINUANCE OF THE TRIAL DATE.**

14 HTC agrees that a continuance of the trial date would promote judicial economy. (*See*
15 TPL’s Motion, Dkt. No. 413 at 4.) The administrative law judge in the ITC proceedings issued
16 his scheduling order on the same day this Court held a case management conference. (*See id.* at
17 2.) This Court’s case management order subsequently issued, which set a trial date starting
18 June 24, 2013—just ten days after the end of the hearing date set by the ITC. (*Id.*) HTC
19 believes that it would be a waste of judicial resources to try the two cases back-to-back, which
20 involve so many identical or overlapping issues involving the same parties and the same ’336
21 patent and similar (if not identical) issues of non-infringement and invalidity. The Initial
22 Determination by the ITC will likely inform each side’s position and could obviate the need for
23 trial in this action. If HTC prevails in the ITC action, for example, TPL may abandon its claims
24

25 ¹ TPL’s Motion also seeks to cast blame on the plaintiffs in the related case, Acer, Inc., Acer
26 America Corporation, and Gateway, Inc. (together “Acer”). HTC will only address TPL’s
arguments directed at HTC.

27 ² TPL also makes the unsupported assertion that HTC caused “years of intentional delay.” (TPL’s
28 Motion, Dkt. No. 413 at 4.) However, as the record clearly shows, a stay was ordered pending
reexamination on June 17, 2009 (Dkt. No. 131) and that stay was dissolved on February 22, 2010.
(Dkt. No. 148.)

1 before this Court or seek to stay trial in this case pending finality of the ITC decision before the
2 Federal Circuit.

3 **C. HTC OPPOSES A CONTINUANCE OF ANY “CORRESPONDING DATES.”**

4 TPL’s motion also seeks a continuance of “corresponding dates,” but TPL does not
5 identify what those dates are. To the extent TPL seeks to extend deadlines for the closure of fact
6 and expert discovery, TPL has provided no justification for such an extension. In fact, because
7 of the evidentiary overlap between the two proceedings, it is actually more efficient for the
8 parties to proceed with fact and expert discovery in parallel rather than repeating fact and/or
9 expert discovery in district court once the ITC investigation is complete.

10 Moreover, a “corresponding” extension of deadlines in this case would actually place
11 many deadlines in conflict with the parties’ preparations for the ITC investigation and the ITC
12 hearing itself. For example, opening expert reports are currently due February 15, 2013 in this
13 case pursuant to the Court’s Case Management Order. (Dkt. No. 379.) A “corresponding”
14 extension of that deadline would place it in the middle of June, which would also be the same
15 time as the ITC hearing. Similarly, the other dates in this case would shift and fall around the
16 same time period when TPL claims it needs to muster its resources for the ITC hearing and post-
17 hearing briefing. Should the Court be inclined to adjust the other pre-trial dates in this action,
18 HTC respectfully requests a case management conference so that the Court may be fully apprised
19 of the scheduling issues and so that the parties can have an opportunity to meet and confer on a
20 proposed scheduling order that will avoid any further conflicts.

21 **D. CONCLUSION**

22 For the foregoing reasons, HTC respectfully requests that the Court grant a continuance
23 with respect to the trial date and deny TPL’s request for a continuance with respect to any other
24 pre-trial dates. In the alternative, HTC respectfully requests that the Court grant a continuance
25 with respect to the trial date and set a date for a future case management conference to address
26 the issue of a new proposed schedule.

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Respectfully submitted,

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