

1 JAMES C. OTTESON, State Bar No. 157781
jim@agilityiplaw.com
2 MICHELLE BREIT, State Bar No. 133143
mbreit@agilityiplaw.com
3 AGILITY IP LAW, LLP
149 Commonwealth Drive
4 Menlo Park, CA 94025
Telephone: (650) 227-4800
5 Facsimile: (650) 318-3483

6 Attorneys for Defendants
TECHNOLOGY PROPERTIES LIMITED and
7 ALLIACENSE LIMITED

8 CHARLES T. HOGE, State Bar No. 110696
choge@knlh.com
9 KIRBY NOONAN LANCE & HOGE
35 Tenth Avenue
10 San Diego, CA 92101
Telephone: (619) 231-8666
11 Facsimile: (619) 231-9593

12 Attorneys for Defendant
PATRIOT SCIENTIFIC CORPORATION
13

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

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

Case No. 5:08-cv-00877 PSG

**JOINT MOTION UNDER CIVIL
LOCAL RULES 6-3 AND 7-11 TO
PERMIT DEPOSITIONS OF LSI
CORPORATION OUT OF TIME
AND TO MODIFY SELECT INTERIM
PRE-TRIAL DATES**

Judge: Hon. Paul S. Grewal

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HTC CORPORATION and HTC)
AMERICA, INC.,)
)
Plaintiffs,)
)
v.)
)
TECHNOLOGY PROPERTIES LIMITED,)
PATRIOT SCIENTIFIC CORPORATION)
and ALLIACENSE LIMITED,)
)
Defendants.)

Case No. 5:08-cv-00882 PSG

Notice of Motion

PLEASE TAKE NOTICE that Plaintiffs Acer, Inc., Acer America Corporation and Gateway, Inc. (collectively, “Acer”) and HTC Corporation and HTC America, Inc. (collectively, “HTC”) together with Defendants Technology Properties Ltd., Patriot Scientific Corporation, and Alliacense Ltd. (collectively, “TPL”) jointly move, pursuant to Civil Local Rules 6-3 and 7-11, to make two modest modifications to the pre-trial dates set forth in the Court’s September 14, 2012 Case Management Order, (877 Doc. 350; 882 Doc 379), as amended in the Court’s December 28, 2012 Order Modifying Interim Pre-Trial Dates (887 Doc. 389; 882 Doc 419) to permit the depositions of witnesses from third party LSI Corporation pursuant to a subpoena issued by TPL to proceed in the week after the currently scheduled close of fact discovery. This Motion is based on the following Memorandum of Points and Authorities, the entire record in these matters, and such evidence as may be presented at any hearing of this Motion, on a date and at a time to be determined by the Court.

Memorandum of Points and Authorities

The parties jointly request that the Court allow two modest adjustments and one clarification to the schedule of these matters to permit the depositions of witnesses from LSI Corporation pursuant to a subpoena issued by TPL to proceed after the currently scheduled close of fact discovery *without* altering any of the remaining scheduled dates or the trial date. Specifically, the parties request that the court permit the depositions of witnesses from LSI Corp., an important third-party for these cases, to proceed in the week following the scheduled close of fact discovery. In light of the LSI Corp. depositions finishing 5 business days after the current discovery cut-off, the parties also ask the Court to extend the deadline for Plaintiffs to serve their opening expert reports on validity issues by 3.5 business days. Other dates under the current scheduling order such as the fact discovery cutoff for all other issues, the expert report deadlines for all other expert reports, the expert discovery cut-off, all dispositive motion deadlines, and the trial date *will all remain unchanged*. In sum, the parties respectfully propose adjusting and clarifying the schedule in the Court’s September 14, 2012 Case Management Order

1 (877 Doc. 350; 882 Doc. 379), as amended in the Court's December 28, 2012 Order Modifying
 2 Interim Pre-Trial Dates (887 Doc. 389; 882 Doc 419), as follows:

<u>Event</u>	<u>Proposed Date</u>
3 Depositions of third party LSI Corp. 4 (currently limited by 2/8/13 fact discovery cutoff)	Completed by February 15, 2013
5 Opening expert reports on infringement and damages by Defendants 6 (currently 2/20/2013 by end of day)	February 20, 2013 (unchanged)
7 Opening expert reports on invalidity by Plaintiffs 8 (currently 2/20/2013 by end of day)	February 26, 2013 by Noon

8 All other dates remain the same.

9
 10 The Parties respectfully seek this adjustment to the schedule to permit the depositions of
 11 witnesses of third party LSI Corp. to go forward after the currently scheduled close of fact
 12 discovery, and to permit Plaintiffs additional time to prepare and serve their opening expert
 13 reports on validity issues. LSI Corp. is a semiconductor company that manufactures integrated
 14 circuits that are incorporated in several of the accused products in these cases. As such, they
 15 have information that is highly relevant to infringement and non-infringement allegations at issue
 16 in these cases. Additionally, because LSI Corp. was founded more than 30 years ago and at least
 17 one of its publications was cited on the reexamination certificates for three of the asserted patents
 18 in this case (U.S. Patent Nos. 5,809,336, 5,530,890, and 5,440,749), they are likely to have
 19 relevant information related to invalidity allegations and/or prior art at issue in these actions.
 20 LSI Corp. has been subpoenaed to testify in connection with these actions and is cooperating by
 21 providing two witnesses to testify, however, those witnesses are unavailable until after the
 22 currently scheduled close of fact discovery on February 8, 2013. Instead, LSI Corp.'s witnesses
 23 are available for deposition on the following week after February 8, 2013, and the depositions of
 24 those two witnesses are currently scheduled to go forward on February 12, 2013 and February
 25 14, 2013. To provide some flexibility for unforeseen events, however, the parties request that
 26 the deadline to complete these depositions of LSI witnesses be set for February 15, 2013, which
 27 is 5 business days after the current discovery cut-off. To ensure that Plaintiffs are not prejudiced
 28 if LSI Corp. testifies about any relevant invalidity and/or prior art issues, the parties also request

1 that Plaintiffs be given a modest extension of 3.5 business days to serve their opening expert
2 reports on validity issues. The parties have agreed amongst themselves that if the LSI
3 depositions are completed by February 14, 2013, as scheduled, Plaintiffs will serve their opening
4 expert reports on validity issues by February 25, 2013 at noon (barring any unforeseen
5 circumstances), notwithstanding the extra day permitted by the proposed schedule above.

6 If the Court grants the modest modifications to the current scheduling order as requested
7 in this motion, the parties agree that the depositions of LSI Corp.'s witnesses should go forward
8 even though those depositions will have to occur during the week following the currently
9 scheduled close of fact discovery.

10 **Conclusion**

11 For the foregoing reasons, the parties respectfully ask the Court to grant its motion to
12 modify interim pre-trial dates and to permit the deposition of LSI Corp. to go forward after the
13 close of fact discovery, as outlined above.

14 Dated: January 29, 2013

Respectfully submitted,
AGILITY IP LAW, LLP

15
16 By: /s/ James C. Otteson
James C. Otteson
149 Commonwealth Drive
Menlo Park, CA 94025
Telephone: (650) 227-4800
Facsimile: (650) 318-3483

17
18
19 Attorneys for Defendants
TECHNOLOGY PROPERTIES LIMITED
and ALLIACENSE LIMITED

20
21
22 KIRBY NOONAN LANCE & HOGE

23 By: /s/ Charles T. Hoge
Charles T. Hoge
35 Tenth Avenue
San Diego, CA 92101
Telephone: (619) 231-8666
Facsimile: (619) 231-9593

24
25
26 Attorneys for Defendant
Patriot Scientific Corporation

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

K&L GATES LLP

By: /s/ Timothy Paar Walker
Timothy Paar Walker
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111

Attorneys for Acer Inc., Acer America Corp.,
and Gateway Inc.

COOLEY LLP

By: /s/ Kyle D. Chen
Kyle D. Chen
Five Palo Alto Square, 4th Floor
3000 El Camino Real
Palo Alto, CA 94306-2155

Attorneys for HTC Corporation and
HTC America, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ACER, INC., ACER AMERICA CORPORATION and GATEWAY, INC.,)

Plaintiffs,)

v.)

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

Defendants.)

Case No. 5:08-cv-00877 PSG

[PROPOSED] ORDER MODIFYING INTERIM PRE-TRIAL DATES

Judge: Hon. Paul S. Grewal

HTC CORPORATION and HTC AMERICA, INC.,)

Plaintiffs,)

v.)

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

Defendants.)

Case No. 5:08-cv-00882 PSG

1 Having considered the Parties' Joint Motion Under Civil Local Rules 6-3 and 7-11 to
2 Permit Depositions of LSI Corporation Out of Time and to Modify Select Interim Pre-Trial
3 Dates, the motion is GRANTED.

4 IT IS HEREBY ORDERED that the following modifications to the schedule and
5 deadlines shall apply to this case:

7 <u>Event</u>	<u>New Date</u>
8 Depositions of third party LSI Corp. (currently limited by 2/8/13 fact discovery cutoff)	Completed by February 15, 2013
9 Opening expert reports on infringement and damages by Defendants 10 (currently 2/20/2013 by end of day)	February 20, 2013 (unchanged)
11 Opening expert reports on invalidity by Plaintiffs 12 (currently 2/20/2013 by end of day)	February 26, 2013 by Noon

13 All other dates remain unchanged.

14
15 Dated: January __, 2013

Paul S. Grewal
United States Magistrate Judge

16
17
18
19
20
21
22
23
24
25
26
27
28