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11 HTC CORPORATION and  
HTC AMERICA, INC.

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION  
16

17 HTC CORPORATION and HTC  
AMERICA, INC.,

18 Plaintiffs,

19 v.

20 TECHNOLOGY PROPERTIES  
21 LIMITED, PATRIOT SCIENTIFIC  
CORPORATION, and ALLIACENSE  
22 LIMITED,

23 Defendants.

Case No. 5:08-CV-00882 PSG

(Related to Case No. 5:08-CV-00877 PSG)

**REPLY BRIEF IN SUPPORT OF RENEWED  
MOTION FOR ENTRY OF JUDGMENT AS A  
MATTER OF LAW OF NON-  
INFRINGEMENT [PER FED. R. CIV. P. 50(b)]**

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

Date: January 7, 2014  
Time: 10:00 a.m.  
Place: Courtroom 5, 4th Floor  
Judge: Hon. Paul S. Grewal

1 HTC Corp. and HTC America, Inc. (collectively “Plaintiffs” or “HTC”) respectfully  
2 submit this reply in support of their renewed motion for judgment as a matter of law under  
3 Federal Rule of Civil Procedure 50(b) and in response to Technology Properties Ltd., Patriot  
4 Scientific Corp., and Alliacense Ltd.’s (collectively “Defendants” or “TPL”) opposition.

5 **I. HTC Is Not Precluded from Arguing that the Claimed “Entire Oscillator” Cannot**  
6 **Rely on an Input Control To Determine Its Frequency.**

7 TPL argues that HTC is precluded from arguing that the claimed “entire oscillator”  
8 cannot rely on an input control to determine its frequency because, according to TPL, HTC did  
9 not raise this argument in its pre-verdict Rule 50(a) motion. (Opp. at 2-3.) TPL’s argument fails  
10 for several reasons.

11 First, the Court expressly acknowledged during the trial that HTC’s arguments regarding  
12 the meaning of “entire oscillator” were preserved. After the Court issued its order on HTC’s  
13 motion for summary judgment of non-infringement, HTC filed a motion requesting that the  
14 Court adopt a jury instruction incorporating a construction of “entire oscillator” consistent with  
15 the order. In particular, HTC asked the Court to adopt a construction that included two  
16 sentences: (1) a first sentence stating that the limitation is “not satisfied by an accused system  
17 that uses any external clock to generate a signal,” and (2) a second sentence specifying, among  
18 other things, that an accused product can infringe only if it “does not rely on an input control to  
19 determine its frequency.” (Dkt. No. 590 at 2:19-23; *see also* Dkt. No. 604 (citing supporting  
20 portions of the intrinsic record).) The Court held a hearing on HTC’s motion and issued an order  
21 adopting a construction of “entire oscillator” based on a modified version of the first sentence of  
22 HTC’s proposal. The Court chose not to adopt the second sentence of HTC’s proposal and  
23 informed the parties that it would instruct the jury in accordance with its construction. (Dkt.  
24 No. 607.)

25 HTC raised this issue again with the Court on the day before closing arguments in the  
26 context of jury instructions on the construction of “entire oscillator.” During the jury instruction  
27 conference with the Court, after taking up the jury instruction on claim construction, counsel for  
28 HTC asked the Court to confirm that HTC’s earlier objections and arguments with respect to its

1 proposed two-sentence construction of “entire oscillator” had been preserved for the record. The  
2 Court confirmed that they were.

3 Mr. Weinstein:

4 I just want to make sure, we understand you -- we had extensive argument  
5 about the entire oscillator term. We had a hearing prior to the trial and I  
6 just wanted to make sure that the objections that we had regarding the two  
7 sentences that we wanted are still preserved.

8 The Court:

9 They are preserved, absolutely.

10 (Supplemental Declaration of Kyle D. Chen in Support of Motion for Entry of Judgment as a  
11 Matter of Law of Non-Infringement (“Chen Supp. Decl.”), Ex. 16 (9/30/2013 Trial Tr. (Dkt.  
12 No. 684) at 1456:16-21 (underlining added).) TPL’s counsel did not object to the Court’s  
13 remarks that HTC’s objections regarding the “entire oscillator” instruction were “preserved,  
14 absolutely.” To the contrary, TPL’s counsel responded by asking the Court for a similar  
15 assurance with respect to TPL’s claim construction arguments on “entire oscillator.” (*Id.* at  
16 1456:22-23 (“Mr. Carmack: And ours too, Your Honor; correct? The Court: And yourself [sic;  
17 yours] are also preserved.”).) HTC fully preserved its argument that “entire oscillator” should be  
18 understood as excluding an oscillator that relies on an input control to determine its frequency, as  
19 HTC has consistently argued throughout this litigation.

20 Second, HTC’s pre-verdict JMOL motion fully raised the argument that the accused HTC  
21 products do not infringe because the oscillator in the accused HTC products relies on an input  
22 control to determine its frequency. (Dkt. No. 647, 4:11-6:13.) HTC’s pre-verdict motion  
23 specifically argued, for example, that the “entire oscillator” limitation was not satisfied because  
24 “the output frequency of the on-chip clock is expressly calculated, in each instance, based on the  
25 input frequency provided by the external clock.” (*Id.* at 6:6-7.) HTC’s motion explained in  
26 detail how the frequency of the on-chip oscillator was based on a formula that expressly relies on  
27 the frequency input from the external clock, including specific citations to the evidentiary record  
28 at trial. (*Id.* at 4:6-6:13.)

1 HTC's pre-verdict JMOL motion more than satisfies the lenient Ninth Circuit standard  
2 for JMOL motions under Rule 50.<sup>1</sup> In the Ninth Circuit, "Rule 50(b) 'may be satisfied by an  
3 ambiguous or inartfully made motion under Rule 50(a),' and it is given a 'liberal interpretation'  
4 to avoid overly harsh results." *C.B. v. City of Sonora*, 730 F.3d 816, 824 n.5 (9th Cir. 2013)  
5 (citing *EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009)). The Federal  
6 Circuit has similarly held that "even a cursory motion suffices to preserve an issue on JMOL so  
7 long as it 'serves the purposes of Rule 50(a), i.e., to alert the court to the party's legal position  
8 and to put the opposing party on notice of the moving party's position as to the insufficiency of  
9 the evidence.'" *W. Union Co. v. MoneyGram Payment Sys., Inc.*, 626 F.3d 1361, 1367 (Fed. Cir.  
10 2010) (quoting *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1379–80 (Fed. Cir.  
11 2009)). HTC's motion under Rule 50(a) far exceeded this liberal standard. TPL has no basis to  
12 contend that it lacked notice of HTC's legal position or HTC's position regarding the sufficiency  
13 of TPL's evidence of literal infringement.

14 **II. No Reasonable Jury Could Find That the Accused HTC Products Satisfy the**  
15 **"Entire Oscillator" Limitation Because the External Clock Is Used To Generate the**  
16 **Signal Used To Clock the CPU in HTC Products.**

17 TPL's claim of infringement went to the jury solely on the issue of literal infringement,  
18 and not infringement under the doctrine of equivalents. (Chen Supp. Decl., Ex. 17 (9/27/13 Trial  
19 Tr.) (Dkt. No. 643) at 1012:25-1013:8.) "If any claim limitation is absent from the accused  
20 device, there is no literal infringement as a matter of law." *Cephalon, Inc. v. Watson Pharms.,*  
21 *Inc.*, 707 F.3d 1330, 1340 (Fed. Cir. 2013). Where there is no material dispute regarding the  
22 operation of the accused products, as is the case here, literal infringement is properly resolved by  
23 the Court as a matter of law. *See MyMail, Ltd. v. Am. Online, Inc.*, 476 F.3d 1372, 1378  
24 (Fed. Cir. 2007).

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25  
26  
27 <sup>1</sup> The Federal Circuit follows regional circuit law with respect to Rule 50(b) motions. *See ePlus,*  
28 *Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 516 (Fed. Cir. 2012) ("We review the district court's  
denial or grant of a JMOL under regional circuit law.") (citing *ActiveVideo Networks, Inc. v.*  
*Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1319 (Fed. Cir. 2012)).

1 TPL contends the jury resolved disputed questions of fact surrounding the operation of  
2 the accused products. (Opp. at 5:1-5.) But TPL’s opposition does not identify any such disputed  
3 facts. TPL admits that the oscillators in the accused HTC products “use the external crystal  
4 clock as a *reference* to *adjust* the on-chip clock signal,” but argues that those oscillators do not  
5 use the crystal “to actually *generate* the on-chip clock signal itself.” (*Id.* at 6:13-14 (bold and  
6 italics in original).) However, this distinction is immaterial to the question of literal infringement  
7 under the Court’s construction. The applicability of the exclusion in the construction of “entire  
8 oscillator” simply requires that the external clock be “*used*” to generate that on-chip clock signal.  
9 It does not require that the external clock “actually generate the on-chip clock signal itself,” as  
10 TPL contends. The clock signal supplied to the CPU is defined by its frequency, and in the case  
11 of the accused HTC phones, that frequency is “generated” by using the signal from the external  
12 clock. The fact that the generation of the CPU clock signal involves factors in addition to the  
13 external clock, such as the on-chip components, is irrelevant. The external clock is indisputably  
14 “used,” for example, as a “reference,” to generate the signal used to clock the CPU. This  
15 undisputed “use” of the external clock in the generation of the CPU clock signal excludes HTC  
16 products from infringement under the Court’s construction.

17 TPL further argues that “[b]ecause the external crystal serves merely as a reference, if  
18 that crystal is disconnected, the ring oscillator will still be able to generate a clock signal.” (Opp.  
19 at 6:21-22.) There is no evidence in the trial record, however, of any *actual* HTC products in  
20 which the external crystal is missing or disconnected. To the contrary, TPL’s expert admitted  
21 that all accused HTC products include a Phase Locked Loop (“PLL”) that receives an input  
22 signal from an external clock and sends out the signal used to clock the CPU. (Chen Decl., Ex. 2  
23 (9/26/2013 Trial Tr.) at 734:19-736:4, 744:15-745:3.) This external clock signal is, according to  
24 Dr. Oklobdzija, “essential” to the PLL in all of the accused HTC products. (*Id.* at 737:17-738:2.)  
25 TPL’s arguments about products with missing or disconnected external crystals, therefore,  
26 present irrelevant hypotheticals having no bearing on infringement of any actual accused  
27 HTC products.

1 The Court’s order denying HTC’s motion for summary judgment held that the question  
2 of whether the external clock is used to “generate” the clock signal turns on the triable issue of  
3 whether the accused oscillator “rel[ies] on an input control to *determine* its frequency.” (Dkt.  
4 Nos. 585 at 11 and 616 at 2:4-7 (emphasis added).) It is no wonder that the Court identified this  
5 triable issue because it is what the ’336 applicants specifically used to distinguish prior art when  
6 amending the asserted claim 6 to require that the “entire” oscillator be on the same integrated  
7 circuit as the CPU. (Dkt. No. 457-14, 2/10/1998 Amendment at 1-2 (TPL853\_00002399-2400).)<sup>2</sup>  
8 The ’336 applicants asserted that “the essential difference” of the “entire oscillator” is that its  
9 frequency is “determined by the processing and/or operating parameters of the integrated  
10 circuit,” while the prior-art oscillator’s frequency is “determined by the fixed frequency of the  
11 external crystal”:

12 The signals PHASE 0, PHASE 1, PHASE 2, and PHASE 3 in Applicant’s  
13 Fig. 18 are synonymous with Q1, Q2, Q3, and Q4 depicted in Magar Fig. 2a.  
14 The *essential difference* is that the frequency or rate of the PHASE 0, PHASE  
15 1, PHASE 2, and PHASE 3 signals is *determined by the processing and/or*  
16 *operating parameters of the integrated circuit* containing the Fig. 18 circuit,  
17 while the frequency or rate of the Q1, Q2, Q3, and Q4 signals depicted in  
18 Magar Fig. 2a are *determined by the fixed frequency of the external crystal*  
19 connected to the circuit portion outputting the Q1, Q2, Q3, and Q4 signals  
20 shown in Magar Fig. 2a.

21 (*Id.* at 4 (TPL853\_00002402) (emphasis added); *see also* ’336, 16:59-60 (the “oscillator  
22 frequency is determined by the parameters of temperature, voltage, and process.”)). That is why  
23 if an oscillator “rel[ies] on *an input control to determine* its frequency,” it cannot infringe the  
24 “entire oscillator” limitation under the Court’s construction.

25 The trial record leaves no doubt that the accused oscillator in all accused HTC products  
26 relies on an input control from the external clock to determine the CPU clock signal’s  
27 frequency—that is, the external clock is “used” to generate the CPU clock signal. Thus, no  
28 accused HTC products can infringe the “entire oscillator” limitation under the Court’s

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<sup>2</sup> Then pending claim 73, which was ultimately renumbered to be the asserted claim 6, was amended to recite “an entire oscillator disposed upon said integrated circuit substrate.” (Dkt. No. 457-14, 2/10/1998 Amendment at 1-2 (TPL853\_00002400).)

1 construction. Because the trial record reveals no factual dispute regarding the operation of the  
 2 accused HTC products, and because that operation cannot literally satisfy the “entire oscillator”  
 3 limitation under the Court’s construction, HTC is entitled to judgment as a matter of law.

4 **III. No Reasonable Jury Could Find that the Accused HTC Products Satisfy the**  
 5 **“Varying ... as a Function of” Limitation Because the Processing Frequency of the**  
 6 **CPU and the Clock Rate of the Oscillator in HTC Products Are Fixed.**

7 TPL argues that because “the processing frequency of the CPU and the clock rate of the  
 8 on-chip oscillator must always vary in the same way,” they must so vary “as a function of  
 9 parameter variation in one or more fabrication or operational parameters” as well. TPL’s  
 10 argument is flawed for several reasons.

11 First, TPL fails to identify anything in the trial record that could support its claim that any  
 12 CPU processing frequency or clock rate of an accused oscillator ever varies “**as a function of**  
 13 **parameter variation in one or more fabrication or operational parameters**” as required by the  
 14 asserted claims. (’336, Claim 6 at 33:2-4 (emphasis added).) The formulae (exemplified below)  
 15 defining the frequency of the CPU clock signal indisputably show that the CPU clock frequency  
 16 is instead a function of the fixed external crystal clock input signal (TCXO, or temperature  
 17 compensated crystal oscillator). There is no variation of any fabrication or operational  
 18 parameters in the formulae.

## 5.1 Output Frequencies

The PLL output clock frequency is given by:

$$f_{\text{CLK}} = f_{\text{TCXO}} * L * 2$$

23 (Chen Decl., Ex. 13 (Trial Ex. 3027) (Dkt. No. 673-09) at QTPL-0013892.)

24 Second, the evidence at trial established that the frequency of the accused oscillator in  
 25 HTC products is controlled and determined by the external crystal clock, which is expressly  
 26 considered by the ’336 patent specification to be a “fixed speed” clock. (See ’336, 17:25-27 and  
 27 17:33 (“the I/O interface **432**, speed of which is controlled by a conventional *crystal clock* **434**,”  
 28 “the *fixed speed* of the I/O interface **432**” (emphasis added)).) The prosecution history also

1 repeatedly makes clear that a crystal controlled CPU clock frequency is “fixed” and is  
2 distinguished from the “varying” oscillator frequency in the ’336 patent:

- 3 • “[T]he clock disclosed in the Magar reference is in fact driven by a *fixed frequency*  
4 *crystal* ....” (Dkt. No. 457-13, 7/7/1997 Amendment at 2 (TPL853\_00002426)  
(emphasis added).)
- 5 • “[T]he Magar microprocessor clock is *frequency controlled by a crystal* .... *Crystals are*  
6 *by design fixed frequency devices* .... The Magar microprocessor in no way  
7 contemplates a variable speed clock as claimed.” (*Id.* at 3-4 (TPL853\_00002427-28)  
(emphasis added).)
- 8 • “The essential difference is that ... the frequency or rate of the Q1, Q2, Q3, and Q4  
9 signals depicted in Magar Fig. 2a are *determined* by the *fixed frequency of the external*  
10 *crystal* ....” (Dkt. No. 457-14, 2/10/1998 Amendment at 4 (TPL853\_00002402)  
(emphasis added).)
- 11 • “The Magar teaching is well known in the art as a conventional *crystal controlled*  
12 *oscillator*. It is specifically distinguished from the instant case in that it is both *fixed-*  
13 *frequency (being crystal based)* and requires an external crystal or external frequency  
generator.” (*Id.* at 5 (TPL853\_00002403) (emphasis added).)

14 The asserted claims, in contrast, require that the “entire oscillator” be “varying ... as a  
15 function of parameter variation in one or more fabrication or operational parameters,” which  
16 according to the applicants is the ’336 patent’s “essential difference” from the Magar prior art.  
17 (*See* Dkt. No. 457-14, 2/10/1998 Amendment at 4 (TPL853\_00002402)) That means the  
18 frequency of the claimed “entire oscillator” in the ’336 patent cannot be “*determined* by the  
19 *fixed frequency of the external crystal.*” (*See id.* (emphasis added).) Because the trial record  
20 established that the accused oscillator’s frequency is indisputably determined by a “fixed speed”  
21 external crystal clock, this frequency cannot “vary[] as a function of parameter variation in one  
22 or more fabrication or operational parameters” as the asserted claims require.

23 Third, the alleged “binning” of chips, for which TPL presented no evidence of any  
24 practice by HTC,<sup>3</sup> does not show that any accused oscillator in a given HTC product has a clock

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25  
26 <sup>3</sup> Without specifically referring to any accused HTC products, TPL attempted to introduce  
27 evidence that chip binning was perhaps occasionally practiced by Qualcomm, which is a third  
28 party. But TPL presented no evidence that the alleged binning was ever practiced in the United  
States by Qualcomm or the chip manufacturers used by Qualcomm. (*See, e.g.,* Chen Supp. Decl.,



1 rate “varying ... as a function of parameter variation” in the fabrication parameters. As a  
2 threshold matter, Dr. Oklobdzija admitted that he had no evidence of HTC practicing any  
3 binning. (Chen Supp. Decl., Ex. 18 (9/26/2013 Trial Tr.) (Dkt. No. 642) at 754:21-755:6;  
4 760:10-23.) Thus, no reasonable jury could find infringement by HTC based on a practice never  
5 used by HTC. Dr. Oklobdzija also admitted that, once a chip is manufactured, the process and  
6 its parameters associated with the chip are already fixed and do not vary. (Chen Supp. Decl.,  
7 Ex. 19 (9/25/2013 Trial Tr.) (Dkt. No. 641) at 575:11-17.) That is, the speed of the oscillator in  
8 any given chip cannot possibly “vary[] ... as a function of” the chip’s *already fixed* process that  
9 has no parameter variation. In addition, Dr. Oklobdzija admitted that the practice of binning  
10 required multiple chips, but the asserted claims indisputably require a *single* chip that meets all  
11 of the claim limitations. (*Id.* at 589:21-590:10; Chen Supp. Decl., Ex. 18 (9/26/2013 Trial Tr.) at  
12 751:5-752:10.) Thus, the alleged “binning,” even if *arguendo* assumed to be practiced by HTC  
13 (of which no evidence was presented at trial), cannot meet the claim requirement that the “entire  
14 oscillator” in a single chip “var[ies] ... as a function of parameter variation in one or more  
15 fabrication or operational parameters.”

16 Consequently, no reasonable jury could find that the accused HTC products meet the  
17 “varying” limitation, and a judgment of no infringement as a matter of law is warranted.

#### 18 **IV. Conclusion**

19 For all of the foregoing reasons, as well as the reasons provided in its opening brief, HTC  
20 respectfully requests that the Court enter judgment as a matter of law under Rule 50(b) in favor  
21 of HTC.

22 ///

23 ///

24 ///

25 ///

26  
27  
28 Ex. 18 (9/26/2013 Trial Tr.) at 754:1-755:6.) TPL also presented no evidence that anyone else  
practiced binning.

1 Dated: November 21, 2013

Respectfully submitted,

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By:       /s/ Kyle D. Chen      

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 13 UNITED STATES DISTRICT COURT  
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 15 SAN JOSE DIVISION

17 HTC CORPORATION and HTC  
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 23 Defendants.

Case No. 5:08-CV-00882 PSG  
 (Related to Case No. 5:08-CV-00877 PSG)  
**SUPPLEMENTAL DECLARATION KYLE D.  
 CHEN IN SUPPORT OF RENEWED MOTION  
 FOR ENTRY OF JUDGMENT AS A  
 MATTER OF LAW OF NON-  
 INFRINGEMENT [PER FED. R. CIV. P. 50(b)]**  
 Complaint Filed: February 8, 2008  
 Trial Date: September 23, 2013  
 Date: January 7, 2014  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

1 I, Kyle D. Chen, declare:

2 1. I am an attorney at the law firm of Cooley LLP, counsel in this action for Plaintiffs  
3 HTC Corporation and HTC America, Inc. (collectively "HTC"). I make this supplemental  
4 declaration in support of Plaintiffs' Renewed Motion for Entry of Judgment as a Matter of Law  
5 on Non-Infringement (Per Fed. R. Civ. P. 50(b)) ("Motion"). I have personal knowledge based  
6 on information provided to me of the facts contained within this declaration, and if called as a  
7 witness, could testify competently to the matters contained herein.

8 2. Attached hereto as **Exhibit 16** are true and correct copies of excerpts from the  
9 transcript of the trial proceedings in this case on September 30, 2013.

10 3. Attached hereto as **Exhibit 17** are true and correct copies of excerpts from the  
11 transcript of the trial proceedings in this case on September 27, 2013.

12 4. Attached hereto as **Exhibit 18** are true and correct copies of excerpts from the  
13 transcript of the trial proceedings in this case on September 26, 2013.

14 5. Attached hereto as **Exhibit 19** are true and correct copies of excerpts from the  
15 transcript of the trial proceedings in this case on September 25, 2013.

16

17 I declare under penalty of perjury that to the best of my knowledge the foregoing is true  
18 and correct. Executed on November 21, 2013 in Palo Alto, California.

19

20

*/s/ Kyle D. Chen*  
\_\_\_\_\_  
Kyle D. Chen

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# EXHIBIT 16

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN JOSE DIVISION  
 4  
 5 HTC CORPORATION AND HTC ) C-08-00882 PSG  
 6 AMERICA, INC., )  
 7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
 8 VS. ) SEPTEMBER 30, 2013  
 9 ) VOLUME 6  
 10 TECHNOLOGY PROPERTIES LIMITED, ) PAGES 1154-1487  
 11 PATRIOT SCIENTIFIC CORPORATION )  
 12 AND ALLIACENSE LIMITED, )  
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TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE PAUL S. GREWAL  
 UNITED STATES MAGISTRATE JUDGE

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25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
 TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

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2 PLAINTIFF'S  
 3 **CHRISTOPHER BOKHART**  
 4 DIRECT EXAM BY MS. KEEFE (RES.) P. 1189  
 CROSS-EXAM BY MR. OTTESON P. 1198  
 REDIRECT EXAM BY MS. KEEFE P. 1237

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 7 DIRECT EXAM BY MR. LEMIEUX P. 1250  
 CROSS-EXAM BY MR. OTTESON P. 1339  
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10 **RUSSELL FISH**  
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19 PLAINTIFF'S  
 20 04:59PM 347, 407, 3107, 3251, 3252, 1444  
 05:00PM 3328, 3451, 3452, 3454, 3456,  
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 05:00PM 22 3247, 3039 AND 1497

UNITED STATES COURT REPORTERS

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 12 DAVID LANSKY  
 13 149 COMMONWEALTH DRIVE  
 MENLO PARK, CALIFORNIA 94025  
 14  
 15 FOR DEFENDANT: KIRBY, NOONAN, LANCE & HOGE  
 PATRIOT: CHARLES T. HOGE  
 16 35 TENTH AVENUE  
 SAN DIEGO, CALIFORNIA 92101  
 17  
 18 ALSO PRESENT: CHARLES MOORE  
 19 CLIFFORD FLOWERS  
 DAN LECKRONE  
 MACK LECKRONE  
 20  
 21  
 22  
 23  
 24  
 25

UNITED STATES COURT REPORTERS

1 SAN JOSE, CALIFORNIA SEPTEMBER 30, 2013  
 09:03AM 2 P R O C E E D I N G S  
 09:03AM 3 (JURY OUT AT 9:03 A.M.)  
 09:03AM 4 THE COURT: MR. RIVERA, WOULD YOU PLEASE CALL THE  
 09:03AM 5 MATTER THAT'S SET FOR TRIAL.  
 09:03AM 6 THE CLERK: YES, YOUR HONOR. CALLING HTC  
 09:03AM 7 CORPORATION, ET AL, VERSUS TECHNOLOGY PROPERTIES LIMITED, ET  
 09:03AM 8 AL, CASE NUMBER CV-08-882, MATTER ON FOR TRIAL.  
 09:03AM 9 COUNSEL, PLEASE STATE YOUR APPEARANCES.  
 09:03AM 10 MR. OTTESON: GOOD MORNING, YOUR HONOR. JIM OTTESON  
 09:03AM 11 FROM AGILITY IP LAW REPRESENTING DEFENDANTS TPL AND ALLIACENSE,  
 09:03AM 12 AND JOINED BY PHIL MARSH, TOM CARMACK, DAVID LANSKY,  
 09:03AM 13 JED PHILLIPS.  
 09:03AM 14 THE COURT: GOOD MORNING, MR. OTTESON.  
 09:03AM 15 MR. HOGE: GOOD MORNING, YOUR HONOR. CHARLIE HOGE  
 09:03AM 16 FOR PATRIOT SCIENTIFIC CORPORATION.  
 09:03AM 17 THE COURT: MR. HOGE, GOOD MORNING, SIR.  
 09:03AM 18 MS. KEEFE: GOOD MORNING, YOUR HONOR. HEIDI KEEFE  
 09:03AM 19 FROM COOLEY REPRESENTING HTC, ALONG WITH MY TEAM.  
 09:03AM 20 THE COURT: MS. KEEFE, GOOD MORNING.  
 09:03AM 21 MS. KEEFE: THANK YOU.  
 09:03AM 22 THE COURT: AND TO ALL OF YOUR COLLEAGUES AS WELL.  
 09:03AM 23 I UNDERSTAND WE HAVE THREE EMERGENCY MOTIONS TO ADDRESS: I  
 09:03AM 24 ALSO WANT TO ADDRESS THE ISSUE OF DR. PROWSE'S TESTIMONY AND  
 09:03AM 25 WHETHER ANY CORRECTIONS TO THE RECORD ARE APPROPRIATE IN LIGHT

UNITED STATES COURT REPORTERS

05:10PM **1** BELIEVE IS FROM CLAIMS 10 AND 16; NUMBER 20 IS FROM CLAIMS 1  
 05:11PM **2** AND 11; NUMBER 22 IS FROM CLAIM 10; AND NUMBER 25 IS, I  
 05:11PM **3** BELIEVE, APPLICABLE TO THE '890 PATENT.  
 05:11PM **4** AND WHEN I -- BY LISTING OTHER CLAIMS, I MEAN TO SAY THAT  
 05:11PM **5** THESE TERMS ARE NOT FOUND IN CLAIMS 6, 13, AND THE TWO -- AND  
 05:11PM **6** THE FOUR DEPENDENT CLAIMS THAT ARE CURRENTLY ASSERTED.  
 05:11PM **7** THE COURT: ALL RIGHT. IF I COULD JUST FIRST ADDRESS  
 05:11PM **8** THE CLAIMS WHICH APPEAR SOLELY IN CLAIM 1, BEFORE I HEAR FROM  
 05:11PM **9** HTC, OF COURSE -- I SHOULD SAY BEFORE I HEAR FROM HTC.  
 05:11PM **10** I WOULD BE INCLINED TO STRIKE, FOR EXAMPLE, NUMBER 11,  
 05:11PM **11** NUMBER 13, AND NUMBER 16 ON THOSE GROUNDS.  
 05:11PM **12** HOWEVER, I DID GIVE MR. OTTESON THE LEEWAY TO ADDRESS  
 05:11PM **13** CLAIM 1, AND I'M JUST CONCERNED THAT THE JURY MAY GO BACK TO  
 05:11PM **14** CLAIM 1 FOR SOME REASON AND ENCOUNTER THIS LANGUAGE.  
 05:11PM **15** DO YOU THINK IT WOULD BE UNDULY BURDENSOME OR CONFUSING TO  
 05:11PM **16** JUST INCLUDE IT ON THAT BASIS?  
 05:11PM **17** MR. CARMACK: I WOULD, YOUR HONOR.  
 05:11PM **18** THE COURT: GO AHEAD.  
 05:11PM **19** MR. CARMACK: FOR A COUPLE REASONS. ONE IS THAT  
 05:12PM **20** THERE'S ALREADY SO MANY TERMS.  
 05:12PM **21** THE COURT: THAT'S TRUE.  
 05:12PM **22** MR. CARMACK: AND, TWO, I THINK MR. OTTESON WAS CLEAR  
 05:12PM **23** THAT THAT -- I THINK PART OF THE POINT OF THAT LINE OF  
 05:12PM **24** QUESTIONING WAS THAT THAT IS NOT ASSERTED.  
 05:12PM **25** IN ADDITION, YOUR HONOR HAS, THROUGHOUT THESE

UNITED STATES COURT REPORTERS

05:13PM **1** CLAIM WHICH IS NO LONGER AT ISSUE IN THIS CASE, THE WISE COURSE  
 05:13PM **2** HERE IS TO GET RID OF IT, AND I'M HAPPY TO DEFER TO YOUR  
 05:13PM **3** JUDGMENT ON THAT.  
 05:13PM **4** ON THAT BASIS, I'M GOING TO DELETE FROM THIS INSTRUCTION  
 05:13PM **5** WHAT IS PRESENTLY NUMBERED AS 2, 7, 11, 13, 16, 19, 20, 22, 25,  
 05:13PM **6** AND 26.  
 05:13PM **7** WITH RESPECT TO WHAT IS PRESENTLY NUMBERED AS 10, I WILL  
 05:14PM **8** EXCISE THE LANGUAGE "VARYING TOGETHER; VARY TOGETHER; VARYING  
 05:14PM **9** IN THE SAME WAY."  
 05:14PM **10** OKAY?  
 05:14PM **11** MR. CARMACK: THANK YOU, YOUR HONOR.  
 05:14PM **12** THE COURT: ALL RIGHT. LET'S TURN TO PAGE 28, WHICH  
 05:14PM **13** IS INFRINGEMENT. ANY OBJECTIONS?  
 05:14PM **14** MR. WEINSTEIN: YOUR HONOR, BEFORE WE MOVE ON.  
 05:14PM **15** THE COURT: OH, YES.  
 05:14PM **16** MR. WEINSTEIN: I JUST WANT TO MAKE SURE, WE  
 05:14PM **17** UNDERSTAND YOU -- WE HAD EXTENSIVE ARGUMENT ABOUT THE ENTIRE  
 05:14PM **18** OSCILLATOR TERM. WE HAD A HEARING PRIOR TO THE TRIAL AND I  
 05:14PM **19** JUST WANTED TO MAKE SURE THAT THE OBJECTIONS THAT WE HAD  
 05:14PM **20** REGARDING THE TWO SENTENCES THAT WE WANTED ARE STILL PRESERVED.  
 05:14PM **21** THE COURT: THEY ARE PRESERVED, ABSOLUTELY.  
 05:14PM **22** MR. CARMACK: AND OURS TOO, YOUR HONOR, CORRECT?  
 05:14PM **23** THE COURT: AND YOURSELF ARE ALSO PRESERVED.  
 05:14PM **24** MR. CARMACK: ALL RIGHT.  
 05:14PM **25** THE COURT: ALL RIGHT. PAGE 28, I BELIEVE THERE WERE

UNITED STATES COURT REPORTERS

05:12PM **1** INSTRUCTIONS, INSTRUCTED THE JURY ON WHICH CLAIMS ARE INCLUDED.  
 05:12PM **2** THE COURT: OKAY. MR. WEINSTEIN, DO YOU WANT TO  
 05:12PM **3** RESPOND?  
 05:12PM **4** MR. WEINSTEIN: YES, YOUR HONOR. THERE'S ACTUALLY A  
 05:12PM **5** FEW MORE AS WELL THAT WE IDENTIFIED.  
 05:12PM **6** THE COURT: OKAY.  
 05:12PM **7** MR. WEINSTEIN: ITEM NUMBER 2 APPEARS TO BE  
 05:12PM **8** APPLICABLE ONLY TO CLAIMS 10 AND 16; ITEM 7, APPLICABLE TO  
 05:12PM **9** CLAIMS 1 AND 10 ONLY; ITEM 10, THERE ARE A NUMBER OF THEM THAT  
 05:12PM **10** WERE SORT OF GROUPED TOGETHER. THE ONLY ONE THAT IS APPLICABLE  
 05:12PM **11** IS THE LAST ONE, VARYING THE SAME WAY. THE OTHER ONES BEFORE  
 05:12PM **12** THE SEMICOLON THERE ARE APPLICABLE TO OTHER UNASSERTED CLAIMS.  
 05:12PM **13** ON NUMBER 13 AND 16, WE AGREE THOSE ARE NOT RECITED IN ANY  
 05:12PM **14** OF THE ASSERTED CLAIMS.  
 05:12PM **15** IN ADDITION, I DO NOT BELIEVE MR. CARMACK MENTIONED IT,  
 05:13PM **16** BUT I THINK 20 IS ANOTHER ONE THAT IS NOT --  
 05:13PM **17** THE COURT: I THINK HE DID. IT SOUNDS LIKE YOU'RE IN  
 05:13PM **18** AGREEMENT ON THAT.  
 05:13PM **19** MR. WEINSTEIN: OKAY. NUMBER 26 IS DUPLICATIVE OF  
 05:13PM **20** 21.  
 05:13PM **21** AND ACTUALLY, IT'S NOT -- THE CLAIM LANGUAGE DOESN'T SAY  
 05:13PM **22** CPU, IT SAYS CENTRAL PROCESSING UNIT, SO 21 IS THE APPROPRIATE  
 05:13PM **23** ONE. 26 CAN GO.  
 05:13PM **24** THE COURT: OKAY. WITH THAT, IT SEEMS AS IF YOU ALL  
 05:13PM **25** ARE IN AGREEMENT THAT IF THE TERMS ARE USED EXCLUSIVELY IN A

UNITED STATES COURT REPORTERS

05:14PM **1** NO OBJECTIONS TO INFRINGEMENT. IS THAT CORRECT?  
 05:14PM **2** MR. CARMACK: CORRECT FOR DEFENDANTS.  
 05:14PM **3** THE COURT: AND FOR HTC?  
 05:14PM **4** MR. WEINSTEIN: THAT'S CORRECT.  
 05:14PM **5** THE COURT: PAYMENT 29, DIRECT INFRINGEMENT. ANY  
 05:14PM **6** OBJECTIONS?  
 05:14PM **7** MR. CARMACK: NONE FROM DEFENDANTS.  
 05:14PM **8** MR. WEINSTEIN: NONE FROM DEFENDANTS.  
 05:14PM **9** THE COURT: PAGE 30, LITERAL INFRINGEMENT. ANY  
 05:15PM **10** OBJECTIONS?  
 05:15PM **11** MR. CARMACK: NONE FROM THE DEFENDANTS.  
 05:15PM **12** MR. WEINSTEIN: JUST ONE, YOUR HONOR. THE SECOND  
 05:15PM **13** PARAGRAPH, THE OBJECTION WE HAVE TO THE SECOND PARAGRAPH ON  
 05:15PM **14** COMPRISING IS WE THINK IT'S ARGUABLY INTENDED IN CONTENTION  
 05:15PM **15** WITH YOUR INSTRUCTION FOR THE ENTIRE OSCILLATOR, WHICH IS THE  
 05:15PM **16** ENTIRE OSCILLATOR EXCLUDED ANY EXTERNAL CLOCK USED TO GENERATE  
 05:15PM **17** THE SIGNAL USED TO CLOCK THE CPU.  
 05:15PM **18** WE'D ASK THAT TO BE REMOVED ONLY BECAUSE WE THINK THAT  
 05:15PM **19** COULD INVITE SORT OF A MISLEADING ARGUMENT THAT, AN ATTEMPT TO  
 05:15PM **20** REREAD WHAT THE EXTERNAL OSCILLATOR INSTRUCTION ACTUALLY SAYS.  
 05:15PM **21** THE COURT: DOES THE -- DO THE -- DOES THE CLAIM  
 05:15PM **22** ENTIRE OSCILLATOR OR ANY OF THE VARIANTS THAT WE'VE TALKED  
 05:15PM **23** ABOUT APPEAR IN ANY ASSERTED CLAIM WHICH ALSO INCLUDES SOME  
 05:15PM **24** PRICING? IN OTHER WORDS, IS THE POTENTIAL FOR THIS OVERLAP  
 05:15PM **25** BETWEEN THE TWO? I THINK THAT'S TRUE, BUT --

UNITED STATES COURT REPORTERS

# EXHIBIT 17



1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN JOSE DIVISION  
 4  
 5 HTC CORPORATION AND HTC ) C-08-00882 PSG  
 6 AMERICA, INC., )  
 7 PLAINTIFF, )  
 8 VS. )  
 9 )  
 10 TECHNOLOGY PROPERTIES LIMITED, )  
 11 PATRIOT SCIENTIFIC CORPORATION )  
 12 AND ALLIACENSE LIMITED, )  
 13 )  
 14 )  
 15 )  
 16 )  
 17 )  
 18 )  
 19 )  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )

TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE PAUL S. GREWAL  
 UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFF: COOLEY LLP  
 BY: HEIDI KEEFE  
 RON LEMIEUX  
 3175 HANOVER STREET  
 PALO ALTO, CALIFORNIA 94304

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
 CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
 TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

1  
 2 DEFENDANTS'  
 3 **STEPHEN PROWSE**  
 4 DIRECT EXAM BY MR. LANSKY (RES.) P. 916  
 5 CROSS-EXAM BY MS. KEEFE P. 927  
 6 REDIRECT EXAM BY MR. LANSKY P. 978  
 7  
 8 **GLORIA FELCYN**  
 9 DIRECT EXAM BY MR. HOGE P. 991  
 10 CROSS-EXAM BY MR. LEMIEUX P. 1001  
 11 REDIRECT EXAM BY MR. HOGE P. 1006  
 12  
 13 PLAINTIFF'S  
 14  
 15 **MARTIN FICHTER**  
 16 DIRECT EXAM BY MS KEEFE P. 1014  
 17 CROSS-EXAM BY MR. CARMACK P. 1033  
 18 REDIRECT EXAM BY MS. KEEFE P. 1039  
 19  
 20 **SINA DENA**  
 21 DIRECT EXAM BY MR. SMITH P. 1040  
 22 CROSS-EXAM BY MR. MARSH P. 1058  
 23 REDIRECT EXAM BY MR. SMITH P. 1073  
 24 RECROSS-EXAM BY MR. MARSH P. 1091  
 25 FURTHER REDIRECT EXAM BY MR. SMITH P. 1091  
 26  
 27 **YU HSIN LIANG**  
 28 DIRECT EXAM BY MS. KEEFE P. 1095  
 29 CROSS-EXAM BY MR. CARMACK P. 1104  
 30 REDIRECT EXAM BY MS. KEEFE P. 1114  
 31  
 32 **CHRISTOPHER BOKHART**  
 33 DIRECT EXAM BY MS. KEEFE P. 1114

INDEX OF EXHIBITS

MARKED ADMITTED

DEFENDANTS'

1628 1112

UNITED STATES COURT REPORTERS

1  
 2 APPEARANCES (CONTINUED)  
 3 FOR THE PLAINTIFF: COOLEY LLP  
 4 BY: STEPHEN R. SMITH  
 5 1299 PENNSYLVANIA AVENUE, NW  
 6 SUITE 700  
 7 WASHINGTON, D.C. 20004  
 8  
 9 BY: MATTHEW J. LEARY  
 10 380 INTERLOCKEN CRESCENT, SUITE 900  
 11 BROOMFIELD, COLORADO 80021  
 12  
 13 ALSO PRESENT: VINCENT LAM  
 14  
 15 FOR DEFENDANTS: AGILITY IP LAW  
 16 TPL AND BY: JAMES C. OTTESON  
 17 ALLIACENSE: IRVIN E. TYAN  
 18 THOMAS T. CARMACK  
 19 VINCENT K. YEE  
 20 DAVID LANSKY  
 21 149 COMMONWEALTH DRIVE  
 22 MENLO PARK, CALIFORNIA 94025  
 23  
 24 FOR DEFENDANT: KIRBY, NOONAN, LANCE & HOGE  
 25 PATRIOT: CHARLES T. HOGE  
 35 TENTH AVENUE  
 SAN DIEGO, CALIFORNIA 92101  
 ALSO PRESENT: CHARLES MOORE  
 CLIFFORD FLOWERS  
 DAN LECKRONE  
 MACK LECKRONE

UNITED STATES COURT REPORTERS

1 SAN JOSE, CALIFORNIA SEPTEMBER 27, 2013  
 08:59AM 2 P R O C E E D I N G S  
 08:59AM 3 (JURY OUT AT 9:07 A.M.)  
 09:07AM 4 THE COURT: MR. RIVERA, WOULD YOU PLEASE CALL THE  
 09:07AM 5 MATTER THAT'S BEEN SET FOR TRIAL.  
 09:07AM 6 THE CLERK: YES, YOUR HONOR. CALLING HTC  
 09:07AM 7 CORPORATION, ET AL VERSUS TECHNOLOGIES PROPERTIES LIMITED, ET  
 09:07AM 8 AL, CASE NUMBER CV-08-00882 PSG, MATTER ON FOR TRIAL.  
 09:07AM 9 COUNSEL, PLEASE STATE YOUR APPEARANCES.  
 09:07AM 10 MR. OTTESON: GOOD MORNING. YOUR HONOR. JIM OTTESON  
 09:07AM 11 FROM AGILITY IP LAW.  
 09:07AM 12 I NOTE THAT THE 49ER'S WON LAST NIGHT, SO I'M TRYING NOT  
 09:07AM 13 TO DO ANYTHING TO SPOIL THE MOOD TODAY.  
 09:08AM 14 THE COURT: I APPRECIATE THAT, MR. OTTESON. GOOD  
 09:08AM 15 MORNING.  
 09:08AM 16 MR. HOGE: GOOD MORNING, YOUR HONOR. CHARLIE HOGE  
 09:08AM 17 FOR PATRIOT SCIENTIFIC.  
 09:08AM 18 THE COURT: GOOD MORNING TO YOU AS WELL, SIR.  
 09:08AM 19 MS. KEEFE: GOOD MORNING, YOUR HONOR. HEIDI KEEFE  
 09:08AM 20 FROM COOLEY FRO HTC.  
 09:08AM 21 THE COURT: GOOD MORNING TO YOU AS WELL, MS. KEEFE.  
 09:08AM 22 I HAVE BEFORE ME A MOTION FOR A, OR A REQUEST FOR A  
 09:08AM 23 CURATIVE INSTRUCTION, SO I BELIEVE WE NEED TO ADDRESS THAT  
 09:08AM 24 ISSUE.  
 09:08AM 25 ARE THERE ALSO EVIDENTIARY OBJECTIONS AND OTHER MATTERS WE

UNITED STATES COURT REPORTERS

12:37PM **1** GENERATE THE SIGNAL USED TO CLOCK THE CPU.

12:37PM **2** THE TESTIMONY HAS SHOWN THAT NONE OF THE HTC PRODUCTS HAS

12:37PM **3** AN ENTIRE OSCILLATOR AS CONSTRUED BY THE COURT, NOR DO HTC'S

12:37PM **4** PRODUCTS PRACTICE THE ELEMENT OF, QUOTE, "VARYING THE

12:37PM **5** PROCESSING FREQUENCY OF SAID FIRST PLURALITY OF ELECTRONIC

12:37PM **6** DEVICES, AND THE CLOCK RATE OF SAID SECOND PLURALITY OF

12:37PM **7** ELECTRONIC DEVICES, IN THE SAME WAY AS A FUNCTION OF PARAMETER

12:37PM **8** VARIATION IN ONE OR MORE FABRICATION OR OPERATIONAL PARAMETERS

12:37PM **9** ASSOCIATED WITH SAID INTEGRATED CIRCUIT SUBSTRATE, THEREBY

12:38PM **10** ENABLING SAID PROCESSING FREQUENCY TO TRACK SAID CLOCK RATE IN

12:38PM **11** RESPONSE TO SAID PARAMETER VARIATION," END QUOTE, AS CONSTRUED

12:38PM **12** BY THE COURT.

12:38PM **13** THE TRIAL EVIDENCE HAS NOT SHOWN THAT THE ACCUSED PRODUCTS

12:38PM **14** VARY BASED ON ANY OF THESE PARAMETERS.

12:38PM **15** WE MAKE THIS MOTION ON THE BASIS THAT THE PATENTEES DID

12:38PM **16** NOT SHOW INFRINGEMENT, EITHER LITERALLY OR UNDER THE DOCTRINE

12:38PM **17** OF EQUIVALENTS, WITH RESPECT TO ANY ASSERTED CLAIM.

12:38PM **18** DEFENDANTS HAVE ALSO FAILED TO PRESENT A LEGALLY

12:38PM **19** SUFFICIENT EVIDENTIARY BASIS THAT ANY ALLEGED INFRINGEMENT BY

12:38PM **20** HTC WAS WILLFUL.

12:38PM **21** THE EVIDENCE AT TRIAL HAS ESTABLISHED AN ABSENCE OF ANY

12:38PM **22** EVIDENCE FOR EITHER THE OBJECTIVE OR SUBJECTIVE PRONG OF THE

12:38PM **23** WILLFUL INFRINGEMENT TEST.

12:38PM **24** ON THE OBJECTIVE PRONG, AS WE EXPLAINED IN OUR SUMMARY

12:38PM **25** JUDGMENT MOTION, THE OBJECTIVE PRONG IS A LEGAL DETERMINATION

UNITED STATES COURT REPORTERS

12:40PM **1** WE THANK THE COURT FOR ITS AND WE PLAN ON SUBMITTING FULL

12:40PM **2** WRITTEN BRIEFING LATER, BUT THIS PRESERVES OUR RECORD AND WE

12:40PM **3** WOULD APPRECIATE THE COURT'S RULING.

12:40PM **4** THE COURT: THANK YOU, MS. KEEFE.

12:40PM **5** MR. OTTESON, DO YOU WANT TO RESPOND? OR MR. HOGE?

12:40PM **6** MR. OTTESON: THANK YOU, YOUR HONOR.

12:40PM **7** DEFENDANTS OPPOSE HTC'S RULE 50(A) MOTION FOR JUDGMENT AS

12:40PM **8** A MATTER OF LAW ON ALL OF THE ISSUES FOR WHICH THEY MOVE.

12:41PM **9** WE BELIEVE THAT WE HAVE SHOWN AN EVIDENTIARY BASIS FOR

12:41PM **10** INFRINGEMENT OF THE '336 PATENT, THAT WE HAVE PROVIDED EVIDENCE

12:41PM **11** THAT THE ACCUSED HTC PRODUCTS INCLUDE THE ENTIRE OSCILLATOR, AS

12:41PM **12** WELL AS SATISFYING THE VARIED IN THE SAME WAY LIMITATIONS THAT

12:41PM **13** HAVE BEEN DISCUSSED BY MS. KEEFE.

12:41PM **14** WE ALSO BELIEVE THAT THERE IS MORE THAN A SUFFICIENT BASIS

12:41PM **15** FOR A FINDING OF INDIRECT INFRINGEMENT WITH RESPECT TO

12:41PM **16** INDUCEMENT. LITERATURE IS PROVIDED BY HTC TO ITS CUSTOMERS

12:41PM **17** INSTRUCTING THEM TO USE A USB CABLE IN AN INFRINGING MANNER, IN

12:41PM **18** OTHER WORDS, TO BASICALLY PROVIDE A SECOND CLOCK SIGNAL AS

12:41PM **19** REQUIRED BY THE CLAIMS.

12:41PM **20** SO WE BELIEVE THAT THERE IS PLENTY OF EVIDENCE THERE, AS

12:41PM **21** WELL AS HTC'S KNOWLEDGE OF NOT ONLY THE PATENT ITSELF, BUT THAT

12:41PM **22** SPECIFIC ARGUMENT, BECAUSE THAT ARGUMENT WAS ACTUALLY MADE TO

12:41PM **23** THEM IN BRIEFINGS BY ALLIACENSE.

12:42PM **24** SO WE BELIEVE WE DEFINITELY SATISFY THAT, WHICH ALSO LEADS

12:42PM **25** INTO THE ISSUE OF WILLFULNESS.

UNITED STATES COURT REPORTERS

12:39PM **1** MADE BY THE COURT, SO NOW THAT THE COURT HAS ALLOWED TPL TO BE

12:39PM **2** HEARD ENTIRELY ON THIS ISSUE, IT SHOULD REMOVE THE ISSUE FROM

12:39PM **3** THE JURY'S CONSIDERATION.

12:39PM **4** TPL HAS ALSO FAILED TO SHOW THE REQUISITE OBJECTIVE LEVEL

12:39PM **5** OF RECKLESSNESS WITH RESPECT TO THE ALLEGED INFRINGEMENT.

12:39PM **6** DEFENDANTS HAVE ALSO FAILED TO PRESENT A LEGALLY

12:39PM **7** SUFFICIENT EVIDENTIARY BASIS FOR ANY ALLEGED INDIRECT

12:39PM **8** INFRINGEMENT. IT IS NOT CLEAR IF TPL IS EVEN PURSUING INDIRECT

12:39PM **9** INFRINGEMENT AT THIS TIME GIVEN THE REDUCTION IN NUMBER OF

12:39PM **10** ASSERTED CLAIMS, BUT IN ANY CASE, THERE HAS NOT BEEN A LEGALLY

12:39PM **11** SUFFICIENT EVIDENTIARY BASIS THAT HTC POSSESSED THE REQUISITE

12:39PM **12** SPECIFIC INTENT FOR ANY FORM OF INDIRECT INFRINGEMENT,

12:39PM **13** INCLUDING INDUCEMENT OR CONTRIBUTORY INFRINGEMENT.

12:39PM **14** DEFENDANTS HAVE ALSO FAILED TO PRESENT A LEGALLY

12:39PM **15** SUFFICIENT EVIDENTIARY BASIS TO SHOW THAT THEY ARE ENTITLED TO

12:39PM **16** DAMAGES FOR ANY ALLEGED INFRINGEMENT BY HTC.

12:40PM **17** THE TRIAL EVIDENCE HAS SHOWN THAT TPL RELIED ON FULL

12:40PM **18** PORTFOLIO LICENSES THAT ARE NOT COMPARABLE TO THE HYPOTHETICAL

12:40PM **19** '336 ONLY LICENSE AT ISSUE IN THIS CASE AND RELIED ON A DAMAGES

12:40PM **20** THEORY THAT IS NOT TIED TO THE FACTS AND CIRCUMSTANCES OF THE

12:40PM **21** CASE.

12:40PM **22** TPL HAS ALSO FAILED TO PRESENT EVIDENCE REGARDING THE

12:40PM **23** ALLEGED IMPORTANCE OF THE '336 PATENT AND, THUS, HAS NOT

12:40PM **24** PROVIDED A LEGALLY SUFFICIENT EVIDENTIARY BASIS FOR ITS

12:40PM **25** REASONABLE ROYALTY DEMAND.

UNITED STATES COURT REPORTERS

12:42PM **1** WE ALSO BELIEVE THAT WE HAVE SUBMITTED AN EVIDENTIARY

12:42PM **2** BASIS TO SUPPORT BOTH SUBJECTIVE AND OBJECTIVE WILLFULNESS

12:42PM **3** BASED ON THE EVIDENCE, THE TESTIMONY FROM MAC LECKRONE, THE

12:42PM **4** DOCUMENTS THAT WERE PROVIDED, THE COMMUNICATIONS THAT WERE

12:42PM **5** EXCHANGED BETWEEN THE PARTIES.

12:42PM **6** AND IN TERMS OF DAMAGES, I BELIEVE THAT WITH RESPECT TO

12:42PM **7** THIS PORTFOLIO AND HOW THE LICENSING PROGRAM WAS DONE UNDER

12:42PM **8** THIS PORTFOLIO, WHICH INCLUDES THE '336 PATENT AS THE COURT HAS

12:42PM **9** ALREADY RECOGNIZED IN DENYING THEIR MOTION FOR SUMMARY

12:42PM **10** JUDGMENT.

12:42PM **11** WE HAVE SUBMITTED MORE THAN A SUFFICIENT EVIDENTIARY BASIS

12:42PM **12** FOR THE MEASURE OF DAMAGES THAT HAVE BEEN TESTIFIED TO BY

12:42PM **13** DR. PROWSE.

12:42PM **14** AND SO WE WOULD ASK THAT THE COURT DENY THEIR MOTION IN

12:42PM **15** ITS ENTIRETY.

12:42PM **16** THE COURT: MR. OTTESON, CAN YOU ASK JUST A COUPLE

12:42PM **17** QUESTIONS? IT SEEMS THAT THE PARTIES AGREE THERE IS NO

12:43PM **18** CONTRIBUTORY INFRINGEMENT CLAIM IN THIS CASE. IS THAT CORRECT?

12:43PM **19** MR. OTTESON: YES, THAT IS CORRECT.

12:43PM **20** THE COURT: OKAY. ON THAT BASIS, TO THE EXTENT THAT

12:43PM **21** THERE EVEN IS ONE, I'LL GRANT THE RULE 50(A) MOTION ON THAT

12:43PM **22** ISSUE.

12:43PM **23** MS. KEEFE: I'LL TAKE THAT AS A VICTORY, YOUR HONOR.

12:43PM **24** THANK YOU.

12:43PM **25** THE COURT: LET ME SEE ABOUT ANOTHER POSSIBILITY,

UNITED STATES COURT REPORTERS

12:43PM **1** MS. KEEFE.

12:43PM **2** ON EQUIVALENTS, D.O.E., I DIDN'T HEAR ANYTHING COMING OUT

12:43PM **3** OF DR. OKLOBDZIJA OR ANY OF THE OTHER WITNESSES AS TO D.O.E.

12:43PM **4** CAN WE AGREE THAT D.O.E. IS OUT?

12:43PM **5** MR. OTTESON: YES, YOUR HONOR.

12:43PM **6** THE COURT: ON THAT BASIS I'LL GRANT THE SECOND

12:43PM **7** VICTORY, AS IT WERE, AND GRANT THE 50(A) MOTION ON THE D.O.E.

12:43PM **8** CLAIM ALONE.

12:43PM **9** MS. KEEFE: THANK YOU, YOUR HONOR.

12:43PM **10** THE COURT: WITH RESPECT TO LITERAL INFRINGEMENT,

12:43PM **11** WILLFULNESS, INDUCEMENT, AND DAMAGES, THE MOTION IS DENIED.

12:43PM **12** ISSUES ARE PRESERVED AND OF COURSE, DEPENDING ON THE OUTCOME,

12:43PM **13** YOU CAN RENEW THOSE MOTIONS POST-TRIAL.

12:43PM **14** MS. KEEFE: APPRECIATE IT. THANK YOU, YOUR HONOR.

12:43PM **15** MR. OTTESON: THANK YOU, YOUR HONOR.

12:43PM **16** THE COURT: ALL RIGHT. ANY OTHER ISSUES BEFORE WE

12:43PM **17** GET BACK TO THE JURY? IF NOT, LET'S STAND.

12:43PM **18** MR. RIVERA.

12:45PM **19** (PAUSE IN PROCEEDINGS.)

12:46PM **20** (JURY IN AT 12:46 P.M.)

12:47PM **21** THE COURT: MEMBERS OF THE JURY, WELCOME BACK. I

12:47PM **22** HOPE YOU HAD A GOOD LUNCH. YOU WILL RECALL THAT JUST BEFORE WE

12:47PM **23** BROKE, TPL HAD RESTED IN ITS CASE.

12:47PM **24** WE WILL NOW HEAR FROM HTC IN ITS CASE.

12:47PM **25** MS. KEEFE, YOU MAY CALL YOUR FIRST WITNESS.

UNITED STATES COURT REPORTERS

12:48PM **1** Q. AND WHAT IS YOUR TITLE AT HTC?

12:48PM **2** A. I'M THE VICE-PRESIDENT OF PRODUCT AND OPERATIONS FOR HTC

12:48PM **3** AMERICA.

12:48PM **4** Q. BEFORE WE GET INTO EXACTLY WHAT DO YOU AT HTC, BECAUSE

12:48PM **5** WE'RE GOING TO GO PRETTY DEEP INTO THAT, I'D LIKE TO ASK A FEW

12:48PM **6** MORE QUESTIONS ABOUT YOUR BACKGROUND SO THE JURY CAN GET TO

12:48PM **7** KNOW YOU JUST A LITTLE BIT.

12:48PM **8** A. SURE. NO PROBLEM.

12:48PM **9** Q. MR. FICHTER, WHERE DO YOU CURRENTLY LIVE?

12:48PM **10** A. I LIVE IN ISSAQUAH. THAT'S A SMALL CITY JUST EAST OF

12:48PM **11** SETTLE, WASHINGTON STATE.

12:48PM **12** Q. I HEAR A LITTLE BIT OF AN ACCENT. WHERE DID YOU GROW UP?

12:49PM **13** A. THANK YOU FOR CALLING IT A LITTLE. I'M GERMAN. I GREW UP

12:49PM **14** IN BERLIN, IN GERMANY.

12:49PM **15** Q. HOW LONG HAVE YOU LIVED IN THE UNITED STATES?

12:49PM **16** A. WELL, MY WIFE AND MY DAUGHTERS, WE CAME OVER IN 2000S,

12:49PM **17** EARLY 2000S, SO ABOUT 13, 14 YEARS.

12:49PM **18** Q. HAVE YOU SPENT ALL OF YOUR TIME IN WASHINGTON SINCE YOU

12:49PM **19** CAME TO THE UNITED STATES?

12:49PM **20** A. WE MOVED TO SAN DIEGO FIRST, SPENT TEN YEARS IN CALIFORNIA

12:49PM **21** BEFORE WE MOVED TO SEATTLE.

12:49PM **22** Q. YOU AND I WERE TEASING YESTERDAY. YOU PREFER CALIFORNIA;

12:49PM **23** RIGHT?

12:49PM **24** A. LOOKING OUT THERE, THE SUN, I LIKE IT BETTER THAN THE

12:49PM **25** RAIN.

UNITED STATES COURT REPORTERS

12:47PM **1** MS. KEEFE: THANK YOU, YOUR HONOR.

12:47PM **2** YOUR HONOR, HTC CALLS MARTIN FICHTER TO THE STAND,

12:47PM **3** PLEASE.

12:47PM **4** THE COURT: MR. FICHTER, GOOD AFTERNOON, SIR.

12:47PM **5** WELCOME.

12:47PM **6** THE WITNESS: GOOD AFTERNOON. WHERE DO I GO?

12:48PM **7** THE COURT: IF YOU COULD APPROACH THE WITNESS STAND,

12:48PM **8** I WOULD APPRECIATE IT. YOU WILL NEED TO BE SWORN BEFORE YOU

12:48PM **9** TAKE YOUR SEAT, SIR.

12:48PM **10** MR. RIVERA, PLEASE SWEAR THE WITNESS.

12:48PM **11** THE CLERK: RAISE YOUR RIGHT HAND.

12:48PM **12** (MARTIN FICHTER, PLAINTIFF'S WITNESS, WAS SWORN.)

12:48PM **13** THE WITNESS: I DO.

12:48PM **14** THE CLERK: THANK YOU. PLEASE BE SEATED.

12:48PM **15** THE WITNESS: THANK YOU.

12:48PM **16** THE COURT: PLEASE STATE YOUR FULL NAME AND SPELL

12:48PM **17** YOUR LAST NAME FOR THE RECORD.

12:48PM **18** THE WITNESS: MY NAME IS MARTIN FICHTER,

12:48PM **19** F-I-C-H-T-E-R.

12:48PM **20** DIRECT EXAMINATION

12:48PM **21** BY MS. KEEFE:

12:48PM **22** Q. GOOD AFTERNOON, MR. FICHTER.

12:48PM **23** A. GOOD AFTERNOON.

12:48PM **24** Q. MR. FICHTER, WHERE DO YOU WORK?

12:48PM **25** A. I WORK AT HTC AMERICA.

UNITED STATES COURT REPORTERS

12:49PM **1** Q. DO YOU HAVE ANY FAMILY, MR. FICHTER?

12:49PM **2** A. YEAH. MY WIFE AND MY TWO DAUGHTERS. MY OLDER ONE, SHE'S

12:49PM **3** IN HER YEAR NUMBER THREE AT REED COLLEGE IN PORTLAND. SHE'S

12:49PM **4** GOING TO MAJOR IN LINGUISTICS. I GUESS IT'S ALL THESE

12:49PM **5** DIFFERENT LANGUAGES THAT LED HER THERE.

12:49PM **6** MY YOUNGER ONE, SHE'S A FRESHMAN AT VASSAR IN

12:49PM **7** POUGHKEEPSIE, NEW YORK. SHE'S LOOKING MORE LIKE INTERNATIONAL

12:49PM **8** MANAGEMENT STUDY.

12:49PM **9** Q. WHAT DOES YOUR -- I'M SORRY.

12:50PM **10** A. MY WIFE, SHE'S SPENDING A LOT OF TIME AT THE YWCA. SHE'S

12:50PM **11** VERY ENGAGED IN WOMEN'S ISSUES AND THERE'S A LOT OF WORK IN OUR

12:50PM **12** AREA WITH DIVERSITY.

12:50PM **13** Q. SO YOUR JOB AT HTC, COULD YOU REPEAT THE TITLE FOR ME

12:50PM **14** AGAIN, PLEASE?

12:50PM **15** A. VICE-PRESIDENT OF PRODUCT AND OPERATIONS.

12:50PM **16** Q. WHAT DOES THAT MEAN?

12:50PM **17** A. I KNOW. IT'S A FANCY TITLE.

12:50PM **18** SO FOR ME IT'S TWO MAJOR BUCKETS. THE PRODUCT BUCKET

12:50PM **19** DEALS MORE WITH UNDERSTANDING ALL THE REQUIREMENTS THAT LEAD TO

12:50PM **20** THE DEVELOPMENT OF A PHONE, THE REQUIREMENTS FOR THE FEATURES

12:50PM **21** FOR WHAT THE CUSTOMERS WANT, FOR WHAT THE WIRELESS OPERATORS

12:50PM **22** LIKE AT&T AND VERIZON WANT, WHAT THE REGULATORS WANT, LIKE THE

12:50PM **23** S.E.C., AND MAKING SURE THAT THE PHONE WILL BE DEVELOPED

12:50PM **24** ACCORDING TO THESE STANDARDS AND REQUIREMENTS, TEST THE PHONES,

12:50PM **25** BRING THEM TO THE LABORATORIES, GET THEM TESTED, GET THEM

UNITED STATES COURT REPORTERS

# EXHIBIT 18

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HTC CORPORATION AND HTC AMERICA, INC.,  
PLAINTIFF,  
VS.  
TECHNOLOGY PROPERTIES LIMITED, PATRIOT SCIENTIFIC CORPORATION AND ALLIACENSE LIMITED,  
DEPENDANT.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE PAUL S. GREWAL  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFF: COOLEY LLP  
BY: HEIDI KEEFE  
RON LEMIEUX  
3175 HANOVER STREET  
PALO ALTO, CALIFORNIA 94304

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

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CROSS-EXAM BY MR. SMITH P. 720  
REDIRECT EXAM BY MR. MARSH P. 761

DANIEL MCNARY LECKRONE  
DIRECT EXAM BY MR. CARMACK P. 793  
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STEPHEN PROWSE  
DIRECT EXAM BY MR. LANSKY P. 832

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APPEARANCES (CONTINUED)

FOR THE PLAINTIFF: COOLEY LLP  
BY: STEPHEN R. SMITH  
1299 PENNSYLVANIA AVENUE, NW  
SUITE 700  
WASHINGTON, D.C. 20004

BY: MATTHEW J. LEARY  
380 INTERLOCKEN CRESCENT, SUITE 900  
BROOMFIELD, COLORADO 80021

ALSO PRESENT: VINCENT LAM

FOR DEFENDANTS TPL AND ALLIACENSE: AGILITY IP LAW  
BY: JAMES C. OTTESON  
IRVIN E. TYAN  
THOMAS T. CARMACK  
VINCENT K. YEE  
DAVID LANSKY  
149 COMMONWEALTH DRIVE  
MENLO PARK, CALIFORNIA 94025

FOR DEFENDANT PATRIOT: KIRBY, NOONAN, LANCE & HOGE  
CHARLES T. HOGE  
35 TENTH AVENUE  
SAN DIEGO, CALIFORNIA 92101

ALSO PRESENT: CHARLES MOORE  
CLIFFORD FLOWERS  
DAN LECKRONE  
MACK LECKRONE

UNITED STATES COURT REPORTERS

03:12PM 1 SAN JOSE, CALIFORNIA SEPTEMBER 26, 2013  
08:56AM 2 P R O C E E D I N G S  
08:56AM 3 (JURY OUT AT 9:01 A.M.)  
09:01AM 4 THE COURT: MR. RIVERA, WOULD YOU CALL THE MATTER  
09:01AM 5 THAT'S BEEN SET FOR TRIAL, IF YOU WOULD.  
09:01AM 6 THE CLERK: YES, YOUR HONOR. CALLING HTC  
09:01AM 7 CORPORATION, ET AL VERSUS TECHNOLOGY PROPERTIES LIMITED, ET AL,  
09:01AM 8 CASE NUMBER CV-08-882 PSG. MATTER ON FOR TRIAL.  
09:01AM 9 COUNSEL, PLEASE STATE YOUR APPEARANCES.  
09:01AM 10 THE COURT: COUNSEL, YOU WANT TO STATE YOUR  
09:01AM 11 APPEARANCES, AT LEAST IN A REPRESENTATIVE CAPACITY.  
09:01AM 12 MR. OTTESON: I'M SORRY. YES, JIM OTTESON,  
09:01AM 13 AGILITY IP LAW. I REPRESENT DEFENDANTS TPL AND ALLIACENSE.  
09:01AM 14 MR. HOGE: EXCUSE ME, YOUR HONOR. CHARLIE HOGE FOR  
09:01AM 15 PATRIOT SCIENTIFIC.  
09:01AM 16 THE COURT: MR. OTTESON, MR. HOGE, GOOD MORNING.  
09:01AM 17 GOOD MORNING TO YOUR COLLEAGUES AS WELL.  
09:01AM 18 MS. KEEFE: YOUR HONOR, GOOD MORNING. HEIDI KEEFE  
09:01AM 19 FROM COOLEY REPRESENTING HTC, WITH MY COLLEAGUES STEVE SMITH,  
09:01AM 20 MATT LEARY, AND RON LEMIEUX.  
09:01AM 21 THE COURT: ALL RIGHT. GOOD MORNING, MS. KEEFE, AND  
09:01AM 22 TO EACH OF YOUR COLLEAGUES AS WELL.  
09:01AM 23 MR. SMITH: GOOD MORNING, YOUR HONOR.  
09:01AM 24 THE COURT: I UNDERSTAND WE HAVE AT LEAST A COUPLE OF  
09:02AM 25 ISSUES TO ADDRESS, EXHIBITS AND SO FORTH. WHO WANTS TO GO

UNITED STATES COURT REPORTERS

11:39AM **1** A. THAT THEY PUT IN A DOCUMENT TO, TO TELL PEOPLE HOW CAN  
 11:39AM **2** THEY GET THE REFERENCE FREQUENCY OR HOW CAN THEY HAVE THE  
 11:39AM **3** OUTPUT FREQUENCY WITH RESPECT TO THE REFERENCE, WHICH IS 19.2.  
 11:39AM **4** Q. OKAY. AND IT'S ALL BASED UPON THIS FORMULA (INDICATING);  
 11:39AM **5** CORRECT?  
 11:39AM **6** A. THIS FORMULA SHOWS THE RELATIONSHIP TO IT.  
 11:39AM **7** Q. OKAY. WE CAN TAKE THAT ONE DOWN. THANK YOU, DOCTOR.  
 11:39AM **8** NOW, DR. OKLOBDZIJA, ONE OF THE -- LET'S SWITCH GEARS.  
 11:39AM **9** LET ME TELL YOU WE'RE GOING TO SWITCH GEARS. WE'RE OFF THE  
 11:39AM **10** SECRET FORMULA. LET'S TALK ABOUT BINNING.  
 11:40AM **11** A. ALL RIGHT.  
 11:40AM **12** Q. ALL RIGHT. NOW, BINNING HAS BEEN AROUND FOR A LONG TIME;  
 11:40AM **13** RIGHT?  
 11:40AM **14** A. NOT FOR SUCH A LONG TIME. I BELIEVE THAT, YOU KNOW, THE  
 11:40AM **15** FIRST HALF OF THE TECHNOLOGY LIFE THERE WAS NO BINNING. IT  
 11:40AM **16** CAME LATER WHEN VARIATIONS INCREASED.  
 11:40AM **17** Q. IT WAS THERE BY THE EARLY '80S; RIGHT?  
 11:40AM **18** A. FOR SOME HIGH SPECIALTY PARTS.  
 11:40AM **19** Q. OKAY. AND IF WE CAN GO BACK TO THE ELMO, AND JUST SO WE  
 11:40AM **20** CAN ORIENT OURSELVES, WHEN YOU PUT UP -- I PUT UP CLAIM 16, OR  
 11:40AM **21** 13, I BELIEVE, AND WE HAD THE PINK OR PURPLE VARYING TOGETHER,  
 11:40AM **22** THAT'S THE SECOND ELEMENT, RIGHT?  
 11:40AM **23** A. ELEMENT B.  
 11:40AM **24** Q. ELEMENT B. SO WE'VE MOVED ON FROM ELEMENT A. NOW WE'RE  
 11:40AM **25** ON ELEMENT B; RIGHT?

UNITED STATES COURT REPORTERS

11:42AM **1** A. YOU CAN SET IT LOWER, YES.  
 11:42AM **2** Q. THIS IS THE MAXIMUM SPEED; CORRECT?  
 11:42AM **3** A. MAXIMUM SAFE SPEED.  
 11:42AM **4** Q. MAXIMUM SAFE SPEED, OKAY.  
 11:42AM **5** SO THESE CHIPS ARE ALL SORTED INTO DIFFERENT BINS BASED  
 11:42AM **6** UPON WHAT YOU CALL MAXIMUM SAFE SPEED; CORRECT?  
 11:42AM **7** A. BASED ON THEIR CAPABILITIES.  
 11:42AM **8** Q. RIGHT. AND THE WAY YOU DETERMINE WHERE THE CHIP WOULD GO  
 11:42AM **9** INTO WHAT BIN IS YOU HAVE TO TEST THESE; RIGHT?  
 11:42AM **10** A. THAT IS CORRECT.  
 11:42AM **11** Q. AND I THINK YOU SHOWED US SOME VIDEO OR SOME -- OR SLIDES  
 11:42AM **12** THAT THERE WERE SEVERAL TESTING STEPS YOU HAVE TO GO THROUGH.  
 11:42AM **13** A. THAT IS CORRECT.  
 11:42AM **14** Q. AND YOU HAVE TO HOOK THE CHIPS UP AND SEE HOW FAST THEY  
 11:42AM **15** RUN?  
 11:42AM **16** A. THAT IS CORRECT.  
 11:42AM **17** Q. AND IT'S PRETTY SOPHISTICATED EQUIPMENT; RIGHT?  
 11:42AM **18** A. THAT IS CORRECT.  
 11:42AM **19** Q. OKAY. AND ONCE YOU DETERMINE HOW FAST THESE THINGS ARE,  
 11:42AM **20** THE MAXIMUM SAFE SPEED, YOU PUT THEM IN DIFFERENT BINS,  
 11:43AM **21** LITERALLY PUT THEM IN SEPARATE FILES (INDICATING); CORRECT?  
 11:43AM **22** A. YES, THAT'S CORRECT.  
 11:43AM **23** Q. AND THEN THE MANUFACTURER, LIKE QUALCOMM, FOR EXAMPLE,  
 11:43AM **24** WOULD SELL THESE CHIPS FOR DIFFERENT PRICES; CORRECT?  
 11:43AM **25** A. YES, THAT'S CORRECT.

UNITED STATES COURT REPORTERS

11:40AM **1** A. THAT'S CORRECT.  
 11:40AM **2** Q. NOW, BINNING, YOU SAID BINNING IS ONE OF THE REASONS WHY  
 11:41AM **3** YOU BELIEVE THAT THE VARYING TOGETHER ELEMENT WAS INFRINGED;  
 11:41AM **4** CORRECT?  
 11:41AM **5** A. WELL, BECAUSE THEY VARY TOGETHER WHEN YOU PUT THEM IN THE  
 11:41AM **6** FAST BIN, THEY'RE FAST TOGETHER. WHEN YOU PUT THEM IN THE SLOW  
 11:41AM **7** BIN, THEY'RE SLOW TOGETHER.  
 11:41AM **8** Q. SO YOU, YOU SAY THE HTC PHONES INFRINGE THE VARYING  
 11:41AM **9** TOGETHER LIMITATION BECAUSE OF BINNING; CORRECT?  
 11:41AM **10** A. THAT IS CORRECT.  
 11:41AM **11** Q. OKAY. NOW, LET'S GO THROUGH THE PROCESS OF BINNING IN A  
 11:41AM **12** LITTLE BIT OF DETAIL. OKAY?  
 11:41AM **13** A. ALL RIGHT.  
 11:41AM **14** Q. THE CHIPS ARE BASICALLY SORTED BY SPEED CAPABILITY.  
 11:41AM **15** YOUR HONOR, MAY I APPROACH AGAIN?  
 11:41AM **16** THE COURT: YOU MAY, MR. SMITH.  
 11:41AM **17** MR. SMITH: THANK YOU.  
 11:41AM **18** Q. BY SPEED; RIGHT? 800 MEGAHERTZ, 1.0 GIGAHERTZ, AND THIS  
 11:41AM **19** LOOKS LIKE 1.3 GIGAHERTZ; CORRECT?  
 11:41AM **20** A. YEAH. THAT'S ILLUSTRATION.  
 11:41AM **21** Q. AND SO THE CHIPS -- AND THE SPEED WE'RE TALKING ABOUT IS  
 11:41AM **22** CAPABILITY; RIGHT?  
 11:41AM **23** A. WHEN YOU BIN, IT'S THE ACTUAL SPEED.  
 11:42AM **24** Q. WELL, YOU COULD SET THE SPEED LOWER THAN 800 MEGAHERTZ;  
 11:42AM **25** CORRECT?

UNITED STATES COURT REPORTERS

11:43AM **1** Q. AND THE SLOW ONES WOULD GO INTO A PHONE, A FLIP TOP PHONE,  
 11:43AM **2** FOR EXAMPLE; AND THEN THE MEDIUM WOULD GO IN A DIFFERENT PHONE;  
 11:43AM **3** AND SO FORTH AND SO ON; RIGHT?  
 11:43AM **4** A. RIGHT.  
 11:43AM **5** Q. BUT YOU WOULD AGREE WITH ME, DOCTOR, THESE CHIPS THAT ARE  
 11:43AM **6** IN ONE BIN FROM THE OTHER ARE DIFFERENT; CORRECT? THEY'RE  
 11:43AM **7** DIFFERENT CHIPS?  
 11:43AM **8** A. WITHIN A BIN?  
 11:43AM **9** Q. NO, BETWEEN THE BINS.  
 11:43AM **10** A. YES.  
 11:43AM **11** Q. THIS IS A DIFFERENT SET OF CHIPS (INDICATING) THAN THIS  
 11:43AM **12** SET OF CHIPS (INDICATING) THAN THIS SET OF CHIPS (INDICATING);  
 11:43AM **13** RIGHT?  
 11:43AM **14** A. THEY COME FROM THE SAME WAFER, SO THEY ARE SAME CHIPS, BUT  
 11:43AM **15** WITH DIFFERENT CAPABILITIES.  
 11:43AM **16** Q. RIGHT. THEY EACH HAVE DIFFERENT CAPABILITIES; RIGHT?  
 11:43AM **17** A. THAT'S CORRECT.  
 11:43AM **18** Q. AND WITHIN THE BIN, THEY HAVE THE SAME CAPABILITIES,  
 11:43AM **19** GENERALLY?  
 11:43AM **20** A. WITHIN A RANGE.  
 11:43AM **21** Q. IN A NARROW RANGE.  
 11:44AM **22** NOW, AGAIN, WE CAN SET THE ACTUAL SPEED LOWER THAN, FOR  
 11:44AM **23** EXAMPLE, 800 MEGAHERTZ; CORRECT?  
 11:44AM **24** A. IF YOU WANT.  
 11:44AM **25** Q. AND YOU COULD SET, FOR EXAMPLE, THIS TO 700 MEGAHERTZ

UNITED STATES COURT REPORTERS

11:44AM 1 (INDICATING), THIS FILE TO 700 GIGAHERTZ, MEGAHERTZ

11:44AM 2 (INDICATING), AND THE SAME WITH THE LAST ONE (INDICATING);

11:44AM 3 CORRECT? IF I WANTED TO?

11:44AM 4 A. YEAH. NOBODY WANTS THAT, BUT YOU CAN DO IT.

11:44AM 5 Q. YEAH. YOU WOULDN'T WASTE SPEED; CORRECT?

11:44AM 6 A. YEAH.

11:44AM 7 Q. ALL RIGHT. NOW, LET'S TURN BACK TO THE HTC PHONES IN THIS

11:44AM 8 CASE. NOW, YOU KNOW HTC IS NOT A MANUFACTURER OF

11:44AM 9 MICROPROCESSORS; RIGHT?

11:44AM 10 A. YES, TO MY KNOWLEDGE.

11:44AM 11 Q. AND YOU'VE NEVER HEARD OF AN HTC MICROPROCESSOR, HAVE YOU?

11:44AM 12 A. NO.

11:44AM 13 Q. RIGHT. AND THE MICROPROCESSORS THAT WE'RE TALKING IN THIS

11:44AM 14 CASE ARE QUALCOMM, TI, AND SAMSUNG; RIGHT?

11:44AM 15 A. THAT'S CORRECT.

11:44AM 16 Q. AND THOSE COMPANIES, DO YOU KNOW WHO ACTUALLY MANUFACTURES

11:44AM 17 THOSE, THOSE CHIPS?

11:44AM 18 A. WELL, IN CASE OF TI, THEY USED TO HAVE THEIR OWN FAB AND

11:45AM 19 PRETTY MUCH THEY ARE -- SAMSUNG HAS THEIR OWN FAB AND THEY'RE

11:45AM 20 CONTRACTING.

11:45AM 21 Q. AND GENERALLY THEY'RE CONTRACTED OVERSEAS; RIGHT?

11:45AM 22 A. WHAT WE HAVE HERE, WE HAVE IBM FOUNDRY AND AMD IN THE U.S.

11:45AM 23 THE U.M. -- WHAT IS IT CALLED, THE FOUNDRY? IT'S -- IT'S

11:45AM 24 LOOKING FOR A PLACE HERE. ONE OF THE BIG FOUNDRIES, TSMC IS IN

11:45AM 25 TAIWAN, TAIWAN SEMI CONDUCTOR MANUFACTURING CORPORATION.

UNITED STATES COURT REPORTERS

11:47AM 1 THIS CASE? OR ARE YOU SPECULATING?

11:47AM 2 A. WHEN DO THEY BIN?

11:47AM 3 Q. YEAH. WHETHER HTC, AS OPPOSED TO THE MANUFACTURE, HAS

11:47AM 4 BINNED THE CHIPS IN THIS CASE.

11:47AM 5 A. I DON'T KNOW WHO BINS THE CHIPS IN THIS CASE.

11:47AM 6 Q. OKAY.

11:47AM 7 WITH THE COURT'S INDULGENCE.

11:47AM 8 THE COURT: GO AHEAD, MR. SMITH. TAKE A MINUTE IF

11:47AM 9 YOU NEED IT.

11:47AM 10 (PAUSE IN PROCEEDINGS.)

11:47AM 11 BY MR. SMITH:

11:47AM 12 Q. NOW, DOCTOR, YOU TALKED ABOUT THIS EARLIER ON IN YOUR

11:47AM 13 TESTIMONY YESTERDAY. I THINK YOU WERE DOING A -- WALKING US

11:47AM 14 THROUGH HOW THE CHIPS ARE FORMED.

11:47AM 15 DO YOU RECALL THAT GENERALLY?

11:47AM 16 A. YES, YES.

11:47AM 17 Q. AND THIS IS A VERY COMPLICATED PROCESS TO MAKE A

11:47AM 18 MICROPROCESSOR; RIGHT?

11:47AM 19 A. TO DESIGN AND MANUFACTURE BOTH.

11:48AM 20 Q. AND YOU WOULD AGREE -- I THINK YOU REFERRED TO THE

11:48AM 21 LITHOGRAPHY PROCESS, HOW YOU ACTUALLY PRINT THESE LITTLE CHIPS

11:48AM 22 IS ALMOST A MIRACLE NOW; RIGHT?

11:48AM 23 A. THAT, TO ME, IT IS A MIRACLE.

11:48AM 24 Q. RIGHT, BECAUSE YOU'RE TALKING ABOUT INDIVIDUAL COMPONENTS

11:48AM 25 THAT ARE TEN TIMES SMALLER THAN A WAVELENGTH OF LIGHT?

UNITED STATES COURT REPORTERS

11:45AM 1 Q. BUT, DOCTOR, YOU WOULD AGREE WITH ME THAT YOU DON'T KNOW

11:45AM 2 WHERE THE CHIPS THAT ARE AT ISSUE IN THIS CASE WITH THE HTC

11:45AM 3 PHONES WERE PHYSICALLY MANUFACTURED; RIGHT?

11:45AM 4 A. I DON'T KNOW WHERE THEY WERE PHYSICALLY MANUFACTURED.

11:46AM 5 Q. THEY COULD HAVE BEEN MANUFACTURED OUTSIDE THE

11:46AM 6 UNITED STATES OR INSIDE OF THE UNITED STATES; RIGHT?

11:46AM 7 A. THEY COULD HAVE.

11:46AM 8 Q. OKAY. AND YOU JUST DON'T KNOW AS YOU SIT HERE TODAY;

11:46AM 9 RIGHT?

11:46AM 10 A. NO. RIGHT AT THIS POINT, I DON'T.

11:46AM 11 Q. NOW, WHEN WE TALK ABOUT BINNING, HTC DOESN'T DO THE

11:46AM 12 BINNING; RIGHT?

11:46AM 13 A. THAT IS, YOU KNOW, YES AND NO, BECAUSE BINNING IS DONE

11:46AM 14 AFTER THE FUNCTIONAL, TESTED FOR FUNCTIONALITY AND THEN

11:46AM 15 ENCAPSULATED AND THEN THE CHIPS ARE TESTED ACTUALLY FOR THEIR

11:46AM 16 PERFORMANCE. AND THEN THEY CAN DO BIN -- THEY CAN DO BINNING

11:46AM 17 POST-WAFER OR THEY CAN DO IT POST-PACKAGING.

11:46AM 18 Q. RIGHT. BUT POST-WAFER, HTC DOESN'T DO ANY BINNING; RIGHT?

11:46AM 19 THEY'RE NOT A MANUFACTURER?

11:46AM 20 A. EXCUSE ME?

11:46AM 21 Q. POST -- POST-WAFER, HTC DOESN'T DO ANY BINNING? THEY'RE

11:46AM 22 NOT THE MANUFACTURER?

11:46AM 23 A. NO. THEIR BINNING IS DONE NORMALLY WHEN THEY PACKAGE THE

11:46AM 24 CHIPS.

11:46AM 25 Q. DO YOU KNOW ONE WAY OR THE OTHER IF THAT HAS OCCURRED IN

UNITED STATES COURT REPORTERS

11:48AM 1 A. OF THE MAXIMUM VISIBLE LIGHT.

11:48AM 2 Q. THE MAXIMUM --

11:48AM 3 A. THE SHORTEST VISIBLE LIGHT, RIGHT, THE UV.

11:48AM 4 Q. AND YOU SAID -- I THINK YOU USED THE ANALOGY THAT YOU

11:48AM 5 COULD PUT THE ENTIRE WORLD'S POPULATION ON ONE OF THESE TINY

11:48AM 6 TRANSISTORS; RIGHT?

11:48AM 7 A. ON CHIPS.

11:48AM 8 Q. ON THE CHIP, EXCUSE ME.

11:48AM 9 A. RIGHT.

11:48AM 10 Q. WHICH ARE VERY, VERY TINY?

11:48AM 11 A. THAT IS CORRECT.

11:48AM 12 Q. RIGHT. AND THERE'S MULTIPLE LAYERS ON THESE CHIPS; RIGHT?

11:48AM 13 THEY'RE LAYERED ON TOP OF EACH OTHER TO FORM -- THEY CALL THEM

11:48AM 14 SUBSTRATES THAT ACTUALLY FORM THE CHIP; RIGHT?

11:48AM 15 A. MULTIPLE LAYERS ON, ON THE SUBSTRATE.

11:48AM 16 Q. ON THE SUBSTRATE. PARDON ME. YOU'RE RIGHT.

11:48AM 17 A. RIGHT.

11:48AM 18 Q. AND THERE'S ALL THESE INTERCONNECTS AND THERE'S ALL THE

11:49AM 19 LINES THAT YOU WERE SHOWING; RIGHT?

11:49AM 20 A. THAT IS CORRECT.

11:49AM 21 Q. AND IT'S VERY COMPLICATED?

11:49AM 22 A. IT IS COMPLICATED.

11:49AM 23 Q. VERY COMPLICATED.

11:49AM 24 SO, DOCTOR, HOW MANY YEARS HAVE YOU BEEN WORKING ON THIS

11:49AM 25 CASE?

UNITED STATES COURT REPORTERS

11:49AM **1** A. IN THIS CASE?

11:49AM **2** Q. YES.

11:49AM **3** A. YOU MEAN THE '336 CASE?

11:49AM **4** Q. YEAH, WITH THIS PATENT. FROM 2007 I THOUGHT YOU SAID.

11:49AM **5** A. YES. I -- I RECEIVED A CALL FROM ROGER COOK IN JUNE 2007.

11:49AM **6** I REMEMBER I JUST CAME BACK FROM AUSTRALIA.

11:49AM **7** Q. AND YOU'RE BEING PAID FOR YOUR SERVICES. YOU'VE BEEN PAID

11:49AM **8** FOR YOUR SERVICES IN THIS CASE; RIGHT?

11:49AM **9** A. YES. I'M NOT DOING IT FOR FREE.

11:49AM **10** Q. RIGHT. AND DO YOU KNOW HOW MUCH YOU'VE BEEN PAID IN THIS

11:49AM **11** CASE, SIR?

11:49AM **12** A. 385.

11:49AM **13** Q. THOUSAND DOLLARS?

11:49AM **14** A. NO, NO. \$385 PER HOUR.

11:49AM **15** Q. AND DO YOU KNOW ROUGHLY HOW MUCH YOU'VE ACCUMULATED DURING

11:49AM **16** THE COURSE OF -- FROM 2007 TO TODAY?

11:49AM **17** A. HONESTLY, I DON'T. YOU KNOW, I KNOW WHEN I DO A TAX

11:49AM **18** RETURN, SO, YOU KNOW, I DID, LIKE, SIX MONTH TAX THIS JUNE, I

11:50AM **19** DID FINE. I DIDN'T HAVE TO PAY TOO MUCH TAXES. BUT I THINK I

11:50AM **20** MAY GET CAUGHT THIS NEXT QUARTER.

11:50AM **21** Q. AND YOU'VE PROBABLY EARNED A COUPLE HUNDRED THOUSAND

11:50AM **22** DOLLARS; RIGHT?

11:50AM **23** A. I DON'T THINK A COUPLE OF HUNDRED THOUSAND.

11:50AM **24** Q. OKAY.

11:50AM **25** A. IT'S BEEN SIX YEARS. IT TRICKLES. SOMETIMES, YOU KNOW, I

UNITED STATES COURT REPORTERS

11:51AM **1** DOCTOR, YOU HAD LOOKED AT AND HAD SAMPLES OF A NUMBER OF THE

11:51AM **2** ACCUSED HTC PRODUCTS; CORRECT?

11:51AM **3** A. THAT IS CORRECT.

11:51AM **4** NOW, MR. SMITH, I FILED SEVERAL EXPERT REPORTS. RIGHT?

11:51AM **5** YOU'RE TALKING ABOUT THE ONE FOR THIS PARTICULAR CASE?

11:51AM **6** Q. FOR THIS PARTICULAR CASE, CORRECT.

11:51AM **7** A. I SEE. YES.

11:51AM **8** Q. YEAH.

11:51AM **9** A. YES.

11:51AM **10** Q. AND YOU HAD SEVERAL OF THE SAMPLES, YOU HAD SEVERAL OF THE

11:52AM **11** ACCUSED PHONES AT YOUR DISPOSAL AT THE TIME YOU FILED YOUR

11:52AM **12** EXPERT REPORT; RIGHT?

11:52AM **13** A. YES.

11:52AM **14** Q. OKAY. AND, DOCTOR, AT THE TIME OF YOUR EXPERT REPORT IN

11:52AM **15** THIS CASE, YOU DID NOT CONDUCT A SINGLE TEST OF ANY OF THE HTC

11:52AM **16** PHONES; CORRECT?

11:52AM **17** A. YOU'RE TALKING ABOUT WHICH DATE, MR. SMITH?

11:52AM **18** Q. WHEN YOU --

11:52AM **19** A. WHEN MY EXPERT REPORT WAS FILED?

11:52AM **20** Q. AT THE TIME YOU FILED YOUR EXPERT REPORT --

11:52AM **21** A. WHICH IS WHICH DATE?

11:52AM **22** Q. UM --

11:52AM **23** A. IF YOU CAN HELP ME --

11:52AM **24** Q. ON JULY -- LET ME MAKE IT EASY FOR YOU.

11:52AM **25** A. RIGHT.

UNITED STATES COURT REPORTERS

11:50AM **1** HAVE HAD TEN HOURS, YOU KNOW. SOMETIMES I HAVE MORE HOURS.

11:50AM **2** Q. SURE.

11:50AM **3** A. WHEN THE TRIALS COME --

11:50AM **4** Q. IT'S EXPENSIVE?

11:50AM **5** A. THIS IS WHEN THE BUSINESS -- BEFORE IT WAS JUST KIND OF

11:50AM **6** TRICKLING AND DORMANT. AS A MATTER OF FACT, BETWEEN 2008 OR

11:50AM **7** '09, I DIDN'T EVEN KNOW IF THE CASE WAS SETTLED BECAUSE THERE

11:50AM **8** WAS NOTHING FOR TWO YEARS.

11:50AM **9** Q. OKAY. NOW, IN THIS CASE YOU FILED WHAT'S CALLED AN EXPERT

11:50AM **10** REPORT; CORRECT?

11:50AM **11** A. THAT IS CORRECT.

11:50AM **12** Q. AND THE EXPERT REPORT, YOU WOULD AGREE WITH ME, IS WHERE

11:50AM **13** YOU'RE REQUIRED, UNDER THE COURT'S RULES, TO LIST ALL YOUR

11:51AM **14** OPINIONS THAT YOU'RE GOING TO OFFER IN A CASE; RIGHT?

11:51AM **15** A. THAT IS CORRECT.

11:51AM **16** Q. AND THAT'S A TIME CONSUMING PIECE TO PUT TOGETHER;

11:51AM **17** CORRECT?

11:51AM **18** A. THAT IS -- THAT IS CORRECT.

11:51AM **19** Q. AND YOU SPENT A LOT OF TIME PUTTING THAT TOGETHER IN THIS

11:51AM **20** CASE; CORRECT?

11:51AM **21** A. YES, IN THIS CASE I DID SPEND QUITE A LOT OF TIME.

11:51AM **22** Q. AND THAT EXPRESSED -- THAT DOCUMENT EXPRESSED ALL OF YOUR

11:51AM **23** OPINIONS; RIGHT?

11:51AM **24** A. YES.

11:51AM **25** Q. OKAY. AND AT THE TIME YOU FILED YOUR EXPERT REPORT,

UNITED STATES COURT REPORTERS

11:52AM **1** Q. BY JULY 13, 2013, OF THIS CASE, YOU HADN'T RUN ANY TESTS

11:52AM **2** ON THE HTC PRODUCTS; CORRECT?

11:52AM **3** A. I HADN'T RUN BECAUSE THEY'RE VERY DIFFICULT.

11:52AM **4** Q. RIGHT. BUT YOU DIDN'T RUN ANY TESTS; CORRECT?

11:52AM **5** A. NO.

11:52AM **6** MR. SMITH: ONE MORE MOMENT, YOUR HONOR?

11:52AM **7** THE COURT: YOU MAY.

11:53AM **8** (DISCUSSION OFF THE RECORD BETWEEN PLAINTIFF'S COUNSEL.)

11:53AM **9** BY MR. SMITH:

11:53AM **10** Q. NOW, LET ME GO BACK TO BINNING FOR ONE LAST SECOND. AND

11:53AM **11** BEFORE YOU SAID THAT POSSIBLY HTC MAY HAVE PACKAGED THE CHIP,

11:53AM **12** RIGHT, AND BINNED IT THAT WAY -- AND, THEREFORE, BINNED;

11:53AM **13** CORRECT?

11:53AM **14** A. RIGHT. THEY CONTACT THE MANUFACTURERS AND THEY, THEY

11:53AM **15** RECEIVE -- ACTUALLY, SOMEBODY ELSE PACKAGED THE CHIPS FOR THEM.

11:53AM **16** THEY RECEIVE THE CHIPS AND THEN THEY MAY DO A BINNING.

11:53AM **17** Q. RIGHT. BUT HTC DOESN'T DO THE PACKAGING; CORRECT?

11:53AM **18** A. THEY CONTRACT SOMEBODY.

11:53AM **19** Q. WELL, YOU DON'T KNOW -- YOU DON'T HAVE ANY EVIDENCE ONE

11:53AM **20** WAY OR THE OTHER IF THEY DO BINNING; CORRECT?

11:53AM **21** A. I DON'T KNOW. THEY MAY DO IT THEMSELVES. I DON'T KNOW.

11:53AM **22** Q. BUT YOU DON'T KNOW?

11:53AM **23** A. I DON'T KNOW. I DON'T PACKAGE, SO I HAVE NO IDEA.

11:53AM **24** MR. SMITH: NO FURTHER QUESTIONS, YOUR HONOR.

11:53AM **25** THE COURT: THANK YOU, MR. SMITH.

UNITED STATES COURT REPORTERS



# EXHIBIT 19

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN JOSE DIVISION  
 4  
 5 HTC CORPORATION AND HTC ) C-08-00882 PSG  
 6 AMERICA, INC., )  
 7 PLAINTIFF, )  
 8 VS. )  
 9 )  
 10 TECHNOLOGY PROPERTIES LIMITED, )  
 11 PATRIOT SCIENTIFIC CORPORATION )  
 12 AND ALLIACENSE LIMITED, )  
 13 )  
 14 )  
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TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE PAUL S. GREWAL  
 UNITED STATES MAGISTRATE JUDGE

15 A P P E A R A N C E S :

16 FOR THE PLAINTIFF: COOLEY LLP  
 17 BY: HEIDI KEEFE  
 18 RON LEMIEUX  
 3175 HANOVER STREET  
 PALO ALTO, CALIFORNIA 94304

20 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
 CERTIFICATE NUMBER 9595

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
 TRANSCRIPT PRODUCED WITH COMPUTER

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 CROSS-EXAM BY MR. LEMIEUX P. 445  
 REDIRECT EXAM BY MR. OTTESON P. 473

**VOJIN OKLOBDZIJA**  
 DIRECT EXAM BY MR. MARSH P. 487

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1  
2 APPEARANCES (CONTINUED)  
 3 FOR THE PLAINTIFF: COOLEY LLP  
 4 BY: STEPHEN R. SMITH  
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 5 SUITE 700  
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 6  
 7 BY: MATTHEW J. LEARY  
 380 INTERLOCKEN CRESCENT, SUITE 900  
 BROOMFIELD, COLORADO 80021  
 8 ALSO PRESENT: VINCENT LAM  
 9  
 10 FOR DEFENDANTS: AGILITY IP LAW  
 TPL AND BY: JAMES C. OTTESON  
 11 ALLIACENSE: IRVIN E. TYAN  
 THOMAS T. CARMACK  
 12 VINCENT K. YEE  
 DAVID LANSKY  
 13 149 COMMONWEALTH DRIVE  
 MENLO PARK, CALIFORNIA 94025  
 14  
 15 FOR DEFENDANT: KIRBY, NOONAN, LANCE & HOGE  
 PATRIOT: CHARLES T. HOGE  
 16 35 TENTH AVENUE  
 SAN DIEGO, CALIFORNIA 92101  
 17  
 18 ALSO PRESENT: CHARLES MOORE  
 19 CLIFFORD FLOWERS  
 DAN LECKRONE  
 20 MACK LECKRONE  
 21  
 22  
 23  
 24  
 25

UNITED STATES COURT REPORTERS

1 SAN JOSE, CALIFORNIA SEPTEMBER 25, 2013  
 2 P R O C E E D I N G S  
 3 (JURY OUT AT 9:04 A.M.)  
 09:04AM 4 THE COURT: MR. RIVERA, WOULD YOU CALL THE MATTER  
 09:04AM 5 THAT'S BEEN SET FOR TRIAL?  
 09:04AM 6 THE CLERK: YES, YOUR HONOR. CALLING HTC  
 09:04AM 7 CORPORATION, ET AL VERSUS TECHNOLOGY PROPERTIES LIMITED, ET AL  
 09:04AM 8 CASE NUMBER CV-08-882 PSG. MATTER ON FOR TRIAL.  
 09:04AM 9 COUNSEL, PLEASE STATE YOUR APPEARANCES.  
 09:05AM 10 MR. OTTESON: GOOD MORNING, YOUR HONOR. JIM OTTESON  
 09:05AM 11 FOR THE DEFENDANTS.  
 09:05AM 12 MR. HOGE: GOOD MORNING, YOUR HONOR. CHARLIE HOGE  
 09:05AM 13 FOR PATRIOT SCIENTIFIC CORPORATION.  
 09:05AM 14 MS. KEEFE: GOOD MORNING, YOUR HONOR. HEIDI KEEFE  
 09:05AM 15 AND MY FRIENDS FOR HTC.  
 09:05AM 16 THE COURT: ALL RIGHT. GOOD MORNING TO EACH OF YOU.  
 09:05AM 17 I UNDERSTAND THAT WE HAVE AT LEAST A COUPLE OF ISSUES TO  
 09:05AM 18 ADDRESS BEFORE WE BRING THE JURY IN THIS MORNING. ONE HAS TO  
 09:05AM 19 DO WITH MATTERS OF SCHEDULING, AND I ALSO UNDERSTAND THERE MAY  
 09:05AM 20 BE EVIDENTIARY OBJECTIONS TO ADDRESS AS WELL.  
 09:05AM 21 WHY DON'T WE START WITH THE SCHEDULING QUESTION?  
 09:05AM 22 MR. OTTESON, WOULD YOU LIKE TO EXPLAIN TO ME WHAT YOUR POSITION  
 09:05AM 23 IS AND WHAT YOU WANT ME TO DO?  
 09:05AM 24 MR. OTTESON: YES. I DON'T THINK THIS IS GOING TO  
 09:05AM 25 IMPACT THE SCHEDULE HARDLY AT ALL. THE WITNESS WE NEED TO

UNITED STATES COURT REPORTERS

02:32PM **1** IN THIS CASE THEY ARE RUNNING SLOWER.

02:32PM **2** Q. DOES THE PATENT TALK AT ALL ABOUT PROCESS OR FABRICATION

02:32PM **3** VARIATIONS?

02:32PM **4** A. YES, IT DOES. AND IT SAYS THAT THESE PROCESS VARIATIONS

02:32PM **5** ARE GOING TO AFFECT EQUALLY THE CPU AND THE RING OSCILLATOR.

02:32PM **6** Q. SO I'M LOOKING HERE AT DDX-127. WHAT ARE YOU SHOWING IN

02:32PM **7** THIS SLIDE?

02:32PM **8** A. AGAIN, THIS IS PATENT LANGUAGE WHICH I'M GOING TO TRY TO

02:32PM **9** SIMPLIFY. IT SAYS THAT, "FOR EXAMPLE, IF THE PROCESSING OF A

02:33PM **10** PARTICULAR DIE IS NOT GOOD RESULTING IN SLOW TRANSISTORS, THE

02:33PM **11** LATCHES AND GATES ON THE MICROPROCESSOR WILL OPERATE SLOWER

02:33PM **12** THAN NORMAL." OKAY.

02:33PM **13** "THUS VARYING THE PROCESSING FREQUENCY IN THE SAME WAY AS

02:33PM **14** A FUNCTION OF PARAMETER VARIABLE IN ONE OR MORE FABRICATION OR

02:33PM **15** OPERATIONAL PARAMETERS ASSOCIATED WITH INTEGRATED SUBSTRATE,"

02:33PM **16** MEANING THAT THAT WILL VARY TOGETHER IN -- AS A RESULT OF THE

02:33PM **17** PROCESS, FABRICATION PROCESS.

02:33PM **18** SO IF THE FABRICATION PROCESS PRODUCES THE SLOWER

02:33PM **19** TRANSISTORS, YOU GET THE SLOWER CPU, GET THE SLOWER RING

02:33PM **20** OSCILLATOR.

02:33PM **21** Q. AND WHY DID YOU HIGHLIGHT THE WORDS "ONE OR MORE" AND "OR"

02:33PM **22** IN THIS SLIDE?

02:33PM **23** A. OKAY. BECAUSE IT'S EXPLAINED THAT FURTHER SAYING THAT IT

02:33PM **24** DOESN'T HAVE TO BE ONLY PROCESS VARIATIONS. IT CAN BE JUST

02:34PM **25** PROCESS VARIATIONS, AND WE STOP THERE.

UNITED STATES COURT REPORTERS

02:35PM **1** WAY THEY ARE PRODUCED.

02:35PM **2** NOW, BINNING TAKES ADVANTAGE OF THESE VARIATIONS THAT THEY

02:35PM **3** VARY TOGETHER AND IT PUTS THEM IN THE PROPER BINS.

02:35PM **4** Q. SO LET'S TAKE A LOOK AT THE ANIMATION HERE ON DDX-128, AND

02:35PM **5** CAN YOU TELL US WHAT DOES THIS SLIDE SHOW?

02:35PM **6** A. WELL, WHAT WE HAVE IN THIS ANIMATION, WE HAVE, YOU KNOW,

02:35PM **7** THE ONE FROM THE SLOWER BINS RUNS SLOWER, THE ONE FROM THE

02:35PM **8** FASTER BIN WILL RUN FASTER WHEN YOU, YOU KNOW, USE THAT CHIP.

02:35PM **9** AND THEN WE HAVE THE I/O INTERFACE RUNNING AT A FIXED

02:35PM **10** SPEED DETERMINED BY THE EXTERNAL CLOCK INDEPENDENT OF THE FIRST

02:36PM **11** CLOCK.

02:36PM **12** Q. NOW, DOES BINNING AFFECT ANY OF THE COMPONENTS ON THE CHIP

02:36PM **13** ILLUSTRATED HERE IN DDX-128?

02:36PM **14** A. IT DOES IN THE WAY THAT THE FASTER BIN HAS FASTER CHIPS OR

02:36PM **15** FASTER COMPONENTS AND SLOWER BIN HAS SLOWER COMPONENTS.

02:36PM **16** Q. SO WHICH COMPONENTS ON THE CHIP ARE AFFECTED BY BINNING?

02:36PM **17** A. THE TRANSISTORS, AS I SAID, THE BUILDING BLOCKS.

02:36PM **18** Q. AND THOSE ARE THE BUILDING BLOCKS ON WHICH COMPONENT?

02:36PM **19** A. EVERYTHING IS BUILT FROM EVERYTHING FROM TRANSISTORS, SO

02:36PM **20** RING OSCILLATOR IS BUILT FROM TRANSISTORS, THE CPU IS BUILT

02:36PM **21** FROM TRANSISTORS, REGISTER FILE IS BUILT FROM TRANSISTORS,

02:36PM **22** LATCHES ARE BUILT FROM TRANSISTORS.

02:36PM **23** SO IF TRANSISTORS ARE FASTER, ALL OF THE ABOVE ARE FASTER.

02:36PM **24** IF TRANSISTORS ARE SLOWER, THEY ARE SLOWER.

02:36PM **25** Q. SO I WANT TO ASK YOU THIS: WE TALKED ABOUT A PLL EARLIER.

UNITED STATES COURT REPORTERS

02:34PM **1** BUT IT CAN BE MORE THAN THAT. MORE THAN MEANS THEY WOULD

02:34PM **2** VARY TOGETHER ON VOLTAGE AND YOU CAN STOP THERE.

02:34PM **3** Q. SO YOU MENTIONED --

02:34PM **4** A. OR THEY SAY IT CAN VARY TOGETHER BECAUSE OF TEMPERATURE.

02:34PM **5** Q. SO I SEE HERE FABRICATION AND OPERATIONAL PARAMETERS AND

02:34PM **6** YOU MENTIONED PROCESS AND VOLTAGE.

02:34PM **7** SO -- WHAT IS -- IS PROCESS ONE OF THOSE PARAMETERS

02:34PM **8** MENTIONED HERE?

02:34PM **9** A. I MENTIONED TEMPERATURE AND VOLTAGE AS OPERATIONAL

02:34PM **10** PARAMETERS.

02:34PM **11** Q. OH. SO TEMPERATURE AND VOLTAGE ARE OPERATIONAL

02:34PM **12** PARAMETERS?

02:34PM **13** A. RIGHT.

02:34PM **14** Q. AND WHAT IS -- IS PROCESS RELATED TO THIS AT ALL? LET ME

02:34PM **15** ASK A DIFFERENT --

02:34PM **16** A. LET'S SAY NO. PROCESS IS -- ONCE THEY'RE MADE, THEY'RE

02:34PM **17** MADE THE WAY THEY'RE MADE.

02:34PM **18** Q. LET ME ASK A DIFFERENT QUESTION. I WASN'T VERY CLEAR.

02:34PM **19** WHAT IS A FABRICATION PARAMETER?

02:34PM **20** A. FABRICATION IS WHAT YOU GET OUT OF THE FABRICATION

02:34PM **21** PROCESS. FABRICATION MEANS PROCESS, FABRICATION PROCESS.

02:35PM **22** SOMETIMES TO SHORTEN IT WE CALL IT PROCESS, OR PROCESSING, BUT

02:35PM **23** IT IS A FABRICATION PROCESS.

02:35PM **24** Q. AND DOES THAT RELATE AT ALL TO THE PRACTICE OF BINNING?

02:35PM **25** A. YES. IT RELATES -- IT'S -- THE FABRICATION PROCESS IS THE

UNITED STATES COURT REPORTERS

02:36PM **1** IS THERE A GOOD ANALOGY TO EXPLAIN A PLL AND WHAT IT DOES? ARE

02:37PM **2** YOU AWARE OF A GOOD COMPARISON?

02:37PM **3** A. WELL, YOU KNOW, I THINK WE USED CRUISE CONTROL AS AN

02:37PM **4** ANALOGY, AND --

02:37PM **5** Q. SO LET'S TAKE A LOOK AT DDX-131. WHAT IS SHOWN HERE?

02:37PM **6** A. WELL, I THINK MY OPPONENTS USED THE ANALOGY OF CRUISE

02:37PM **7** CONTROL, BUT I THINK I CAME TO THAT REALLY AT THE FIRST

02:37PM **8** DEPOSITION. I WAS DRIVING THROUGH TEXAS AND, YOU KNOW, TEXAS

02:37PM **9** IS HILLY, AND I ALREADY HAD ONE BIG SPEEDING TICKET IN TEXAS,

02:37PM **10** SO I SET IT ON CRUISE CONTROL AND I WAS VERY NERVOUS. I MEAN,

02:37PM **11** WHEN THE CAR GOES DOWNHILL.

02:37PM **12** BUT THE CRUISE CONTROL VARIES BY, YOU KNOW, SOME FIVE,

02:37PM **13** SEVEN MILES, OKAY? AND I SET IT RIGHT KIND OF ABOVE THE SPEED

02:38PM **14** LIMIT, JUST I KNOW THEY WILL NOT STOP ME FOR THAT, SO A FEW

02:38PM **15** MORE MILES, IT'S ALL GOOD.

02:38PM **16** AND I USE THIS ANALOGY. SO YOU CAN SET, SET YOUR

02:38PM **17** REFERENCE, WHICH IS HOW I SET MY REFERENCE.

02:38PM **18** BUT YOUR, YOUR SPEED WILL VARY DEPENDING ON THE

02:38PM **19** CONDITIONS.

02:38PM **20** Q. AND SO GOING UP A HILL, HOW DOES THAT RELATE, IF AT ALL,

02:38PM **21** TO A PLL?

02:38PM **22** A. WELL, THE CRUISE CONTROL WILL STILL -- YOU KNOW, EVEN

02:38PM **23** THOUGH -- IT'LL KICK -- YOUR CAR WILL SLOW DOWN, BUT THE CRUISE

02:38PM **24** CONTROL WILL KICK IT UP TO RUN FASTER, SO YOU WILL SEE YOUR

02:38PM **25** ENGINE REVVING.

UNITED STATES COURT REPORTERS

03:09PM **1** THE COURT: WHY WOULDN'T JUDGE GILDEA'S DETERMINATION  
 03:09PM **2** AT LEAST BE APPROPRIATE FOR THE JURY TO CONSIDER IN WEIGHING  
 03:09PM **3** AND EVALUATING THIS ASSERTION?  
 03:09PM **4** MR. MARSH: WELL, AS YOUR HONOR MAY BE AWARE, WE  
 03:09PM **5** RECENTLY FILED A PETITION FOR REVIEW. WE DISAGREE STRONGLY,  
 03:09PM **6** OBVIOUSLY, WITH THAT OPINION, OR WITH THAT INITIAL  
 03:09PM **7** DETERMINATION. AND IT'S JUST THAT, AN INITIAL DETERMINATION OF  
 03:09PM **8** AN ADMINISTRATIVE OFFICER.  
 03:09PM **9** OUR VIEW IS THAT THAT IS INCORRECT AND THERE'S NOBODY  
 03:09PM **10** BETTER SITUATED HERE TO TESTIFY OR TO EXPLAIN OR TAKE A  
 03:09PM **11** POSITION ON WHAT MICROPROCESSORS NEED TO BE CLOCKED AT THE  
 03:09PM **12** SPEEDS THAT THEY RUN AT TODAY THAN DR. OKLOBDZIJA.  
 03:09PM **13** THE COURT: ALL RIGHT. WELL, I DON'T THINK WE WANT  
 03:09PM **14** TO GET INTO THE ITC AND I DON'T THINK, FRANKLY, IT'S IN YOUR  
 03:09PM **15** INTERESTS THAT THE COURT ALLOW ANYONE TO GET INTO THE ITC IN  
 03:09PM **16** THIS TRIAL, SO I'M GOING TO SUSTAIN THE OBJECTION.  
 03:09PM **17** LET'S FOCUS ON THE MICROPROCESSOR THAT WE'RE HERE TO TALK  
 03:09PM **18** ABOUT AND IGNORE THE OTHERS. ALL RIGHT?  
 03:09PM **19** SO IF YOU WANT TO GO DOWN THIS ROAD AND LIMIT YOURSELF TO  
 03:09PM **20** THAT OPINION, I WILL LET YOU DO THAT, BUT I'M GOING TO LET THEM  
 03:09PM **21** GET INTO THE ITC IF YOU GO THERE.  
 03:09PM **22** SO THAT'S THE RULING I'M GOING TO GO WITH.  
 03:10PM **23** MR. MARSH: THANK YOU, YOUR HONOR. WE'LL GO A  
 03:10PM **24** DIFFERENT DIRECTION.  
 03:10PM **25** THE COURT: ALL RIGHT. MR. RIVERA, DO YOU WANT TO  
 UNITED STATES COURT REPORTERS

03:11PM **1** PORTFOLIO?  
 03:11PM **2** A. YES, I DID. I REVIEWED ALL OF THEM.  
 03:11PM **3** Q. AND DO YOU HAVE AN OPINION, SIR, AS TO THE RELATIVE VALUE  
 03:11PM **4** OF THE '336 PATENT IN THE MMP PORTFOLIO?  
 03:11PM **5** A. YES. I THINK IT'S THE MOST VALUABLE OF ALL OF THE  
 03:11PM **6** PATENTS.  
 03:11PM **7** Q. THANK YOU. I WANT TO TURN NOW TO DDX --  
 03:12PM **8** A. I WANT TO QUALIFY. IT'S MOST APPLICABLE. IT'S HARD TO  
 03:12PM **9** VALUE A PATENT. I THINK IT'S -- SO I WON'T GET INTO THAT.  
 03:12PM **10** Q. OKAY. THANK YOU. LET'S TURN TO DDX-139. SO WHAT ARE YOU  
 03:12PM **11** SHOWING US HERE ON THIS SLIDE, DR. O?  
 03:12PM **12** A. WHAT WE'RE SHOWING ARE THE CLAIMS OF THOSE, OF '336 PATENT  
 03:12PM **13** WHICH HAVE BEEN ASSERTED AGAINST HTC CURRENTLY.  
 03:12PM **14** Q. AND I SEE -- WELL, LET ME BACK UP. WHAT ARE CLAIMS IN THE  
 03:12PM **15** PATENT, JUST GENERALLY?  
 03:12PM **16** A. OKAY. THE CLAIMS ARE THE MOST IMPORTANT PART OF THE  
 03:12PM **17** PATENT. THEY -- THEY DESCRIBE THE SCOPE OF THE PATENT. THEY  
 03:12PM **18** DESCRIBE WHAT IT IS THAT THE PATENT IS CLAIMING THAT THE PATENT  
 03:12PM **19** HAS INVENTED. THAT IS SUMMARIZED IN THE CLAIMS AND THAT IS THE  
 03:12PM **20** RELEVANT PART.  
 03:13PM **21** AND WHEN -- AS AN EXPERT, WHEN I EXAMINE THE PATENT, I  
 03:13PM **22** LOOK AT THE CLAIMS.  
 03:13PM **23** Q. AND I SEE HERE THAT YOU LIST TWO INDEPENDENT CLAIMS,  
 03:13PM **24** INDEPENDENT CLAIM 6 AND INDEPENDENT CLAIM 13.  
 03:13PM **25** WHAT IS AN INDEPENDENT CLAIM?  
 UNITED STATES COURT REPORTERS

03:10PM **1** BRING THE JURY IN, PLEASE.  
 03:10PM **2** THE CLERK: YES, YOUR HONOR.  
 03:10PM **3** THE COURT: THANK YOU.  
 03:10PM **4** (JURY IN AT 3:10 P.M.)  
 03:10PM **5** THE COURT: MEMBERS OF THE JURY, BEFORE WE BROKE, WE  
 03:10PM **6** WERE HEARING TESTIMONY FROM DR. OKLOBDZIJA.  
 03:10PM **7** DR. OKLOBDZIJA, WOULD YOU RESUME YOUR PLACE ON THE WITNESS  
 03:10PM **8** STAND? I WILL REMIND YOU YET AGAIN, SIR, THAT YOU REMAIN UNDER  
 03:10PM **9** OATH.  
 03:10PM **10** THE WITNESS: YES, YOUR HONOR.  
 03:10PM **11** THE COURT: MR. MARSH, WHENEVER YOU'RE READY, YOU MAY  
 03:11PM **12** RESUME YOUR EXAMINATION.  
 03:11PM **13** MR. MARSH: THANK YOU, YOUR HONOR.  
 03:11PM **14** Q. DR. O, BEFORE THE BREAK WE WERE TALKING ABOUT THE '336  
 03:11PM **15** PATENT. ARE YOU AWARE THAT THE '336 PATENT IS PART OF A  
 03:11PM **16** PORTFOLIO OF PATENTS?  
 03:11PM **17** A. YES, I AM.  
 03:11PM **18** Q. AND WHAT PORTFOLIO IS THAT, SIR?  
 03:11PM **19** A. IT IS CALLED MMP PORTFOLIO.  
 03:11PM **20** Q. AND WHAT DOES MMP MEAN?  
 03:11PM **21** A. THE MOORE MICROPROCESSOR PATENT PORTFOLIO.  
 03:11PM **22** Q. AND DO YOU HAVE AN OPINION, SIR, AS TO THE RELATIVE VALUE  
 03:11PM **23** OF THE '336 PATENT IN THAT PORTFOLIO?  
 03:11PM **24** I'M SORRY. LET ME ASK A DIFFERENT QUESTION FIRST.  
 03:11PM **25** DID YOU ANALYZE ANY OF THE OTHER PATENTS IN THE MMP  
 UNITED STATES COURT REPORTERS

03:13PM **1** A. AN INDEPENDENT CLAIM IS A CLAIM THAT CAN STAND BY ITSELF.  
 03:13PM **2** SO -- YES.  
 03:13PM **3** Q. AND SO YOU ALSO LIST SOME DEPENDENT CLAIMS. WHAT ARE  
 03:13PM **4** DEPENDENT CLAIMS?  
 03:13PM **5** A. DEPENDENT CLAIMS ARE THE CLAIMS THAT DEPEND ON THE OTHER  
 03:13PM **6** CLAIMS, SO IN THIS CASE CLAIM 6 IS INDEPENDENT AND CLAIM 7 AND  
 03:13PM **7** 9 DEPEND ON 6.  
 03:13PM **8** SO IF, FOR EXAMPLE, IN THE PATENT RE-EXAMINATIONS -- AND  
 03:13PM **9** THIS, THIS HAD MANY -- IF THE EXAMINER WOULD FIND CLAIM 6  
 03:13PM **10** INVALID AND STRIKE IT, THEN THERE GOES 7 AND 9.  
 03:13PM **11** Q. SO I DON'T WANT TO FOCUS ON VALIDITY RIGHT NOW. THE  
 03:13PM **12** PATENT'S PRESUMED VALID, YOU UNDERSTAND?  
 03:14PM **13** A. YES, I -- I AM AWARE THAT THE PATENT WENT THROUGH TWO  
 03:14PM **14** RE-EXAMINATIONS. THERE WAS SIX REQUESTS, FOUR WERE GRANTED,  
 03:14PM **15** THOSE FOUR WERE COMBINED INTO TWO, AND THERE WERE 600  
 03:14PM **16** REFERENCES THAT WERE ASSERTED AND THEY WERE EXAMINED AND THE  
 03:14PM **17** PATENT STILL STANDS.  
 03:14PM **18** AND IN MY LONG HISTORY, I THINK I STARTED BY -- I DON'T  
 03:14PM **19** KNOW IF I READ THE 600 REFERENCES, BUT I READ A LARGE PORTION  
 03:14PM **20** OF THEM.  
 03:14PM **21** Q. THANK YOU. LET'S FOCUS ON INFRINGEMENT OF THESE CLAIMS  
 03:14PM **22** THAT ARE LISTED HERE IN DDX-139. AND IN DDX-140, YOU HAVE WHAT  
 03:14PM **23** YOU SAY IS A DIAGRAM OF CLAIMS 6 AND 13.  
 03:14PM **24** CAN YOU EXPLAIN WHAT THIS IS?  
 03:14PM **25** A. YES. IN THE DIAGRAM, I'M TRYING TO SIMPLIFY IT AND

03:14PM **1** PRESENT IT TO THE COURT IN A WAY THAT AN ORDINARY PERSON CAN

03:15PM **2** UNDERSTAND. IT'S LIKE WHAT ARE THOSE CLAIMS 6 AND 13 ABOUT

03:15PM **3** BASICALLY.

03:15PM **4** Q. SO THIS IS AN ILLUSTRATION OF THE ELEMENTS IN THE CLAIMS?

03:15PM **5** A. RIGHT. IT SAYS WE HAVE A SINGLE CHIP WHICH CONTAINS ONE

03:15PM **6** CLOCK, FIRST CLOCK (INDICATING); THE CLOCK CPU (INDICATING); IT

03:15PM **7** CONTAINS THE I/O INTERFACE CONNECTED BY A BUS WHICH HAS

03:15PM **8** CONTROL, ADDRESS, AND DATA (INDICATING); AND THERE IS A SECOND

03:15PM **9** CLOCK WHICH IS EXTERNAL TO THE CHIP (INDICATING), TO THE

03:15PM **10** SILICON, CONNECTED TO THE MEMORY BUS.

03:15PM **11** Q. OKAY. LET'S TAKE A LOOK AT THE ACTUAL CLAIM LANGUAGE OF

03:15PM **12** THE FIRST CLAIM LIST OF INDEPENDENT CLAIM 6.

03:15PM **13** (DISCUSSION OFF THE RECORD BETWEEN DEFENDANTS' COUNSEL.)

03:16PM **14** BY MR. MARSH:

03:16PM **15** Q. WHAT'S SHOWN HERE IN DDX-142?

03:16PM **16** A. THIS EXHIBIT SHOWS CLAIM 6.

03:16PM **17** NOW, IF YOU START READING THIS CLAIM 6, I THINK YOU GET A

03:16PM **18** HEADACHE. I MEAN, SO I TRIED TO BREAK IT INTO BASICALLY

03:16PM **19** LANGUAGE THAT, YOU KNOW, ONE CAN HANDLE, DIGEST AND UNDERSTAND,

03:16PM **20** TO SIMPLIFY IT, TO BREAK IT INTO WHAT IS CALLED ELEMENTS.

03:16PM **21** OKAY. THIS CLAIM CLAIMS ELEMENTS A, B, C, AND D.

03:16PM **22** Q. IS THAT WHAT YOU'RE SHOWING BY THE COLORS HERE ON DDX-143?

03:16PM **23** A. RIGHT. IN ORDER TO ACHIEVE THAT, I COLORED IT.

03:16PM **24** SO THIS IS ELEMENT A (INDICATING); ELEMENT B (INDICATING);

03:16PM **25** ELEMENT C (INDICATING); ELEMENT D (INDICATING).

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03:18PM **1** A. YES.

03:18PM **2** Q. OKAY. SO I WANT TO -- I WANT TO UNDERSTAND EACH OF THESE

03:18PM **3** ELEMENTS. LET'S START FIRST WITH THE FIRST ELEMENT, ELEMENT A

03:18PM **4** AS SHOWN HERE ON DDX-145.

03:18PM **5** NOW, CAN YOU TELL ME WHAT'S -- WHAT IS ELEMENT A?

03:18PM **6** A. RIGHT. I JUST WENT THROUGH THAT, AND BASICALLY I READ

03:18PM **7** THIS AND, YOU KNOW, YOU CAN SUMMARIZE IT, OKAY, THAT THE FIRST

03:18PM **8** CLOCK -- THIS DIED.

03:19PM **9** THE FIRST CLOCK AND THE CPU HAVE TO BE ON THE SAME

03:19PM **10** INTEGRATED CIRCUIT.

03:19PM **11** Q. AND THE INTEGRATED CIRCUIT HERE IS WHERE?

03:19PM **12** A. THE BOUNDARY IS THIS SQUARE BOUNDARY (INDICATING).

03:19PM **13** AND WHY IS THAT SO? SO THAT THEY ARE BUILT ON THE SAME

03:19PM **14** TRANSISTORS AND THEY ARE EQUALLY EXPOSED TO THE SAME

03:19PM **15** PARAMETERS, PROCESS, AND OPERATING CONDITIONS. THAT'S

03:19PM **16** BASICALLY WHY THIS ELEMENT IS REQUIRED. THEY ARE BOTH ON THE

03:19PM **17** IC.

03:19PM **18** Q. SPEAKING OF THAT, LET'S TURN TO DDX-146. WHAT ARE YOU

03:19PM **19** SHOWING ON THIS SLIDE?

03:19PM **20** A. THIS SLIDE IS THE SECOND ELEMENT OF THE CLAIM, WHICH

03:19PM **21** REQUIRES THAT THEY VARY TOGETHER, OKAY?

03:19PM **22** SO IT READS THAT VARYING THE PROCESSING FREQUENCY OF THE

03:19PM **23** FIRST TRANSISTORS AT A CLOCK RATE OF -- THANK YOU VERY MUCH.

03:20PM **24** I -- THIS DOESN'T WORK -- AND THE SECOND PLURALITY OF THE

03:20PM **25** ELECTRONIC DEVICES, THEY VARY THE SAME WAY AS THE FUNCTIONAL

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03:16PM **1** AND THIS CLAIM 6 CONSISTS -- YOU CAN BREAK IT INTO FOUR

03:16PM **2** ELEMENTS.

03:16PM **3** Q. AND SO WHAT ARE YOU SHOWING HERE ON DDX-144?

03:17PM **4** A. OKAY. SO ON -- I'M SHOWING THOSE FOUR ELEMENTS AND

03:17PM **5** BASICALLY SUMMARIZING IN A FEW WORDS WHAT THEY ARE ABOUT.

03:17PM **6** AND IF YOU CAN GO BACK ONE SLIDE, PLEASE.

03:17PM **7** FOR EXAMPLE, IF YOU READ THIS, A CENTRAL PROCESSING UNIT

03:17PM **8** WHICH IS ON AN INTEGRATED CIRCUIT SUBSTRATE, OPERATING A

03:17PM **9** PROCESSING FREQUENCY, MADE OF A FIRST PLURALITY OF TRANSISTORS,

03:17PM **10** THE OSCILLATOR, ENTIRE, NOT JUST PARTIAL, ALSO AN INTEGRATED

03:17PM **11** CIRCUIT WHICH IS CONNECTED TO THE CENTRAL PROCESSING UNIT,

03:17PM **12** CLOCKING IT, MADE OF THE SECOND VARIETY OF A DEVICE, MEANING

03:17PM **13** ALSO TRANSISTORS.

03:17PM **14** OKAY. SO I SUMMARIZED THAT -- IF YOU CAN GO ON THE NEXT

03:17PM **15** SLIDE -- BASICALLY WHEN IT SAYS IS IT'S A CPU AND THE FIRST

03:17PM **16** CLOCK ARE ON THE SAME IC.

03:17PM **17** Q. AND IC HERE IS?

03:18PM **18** A. INTEGRATED CIRCUIT.

03:18PM **19** Q. AND I SAW THE WORD "SUBSTRATE." WHAT DOES THAT MEAN?

03:18PM **20** A. A SUBSTRATE IS -- I WOULD SAY MORE ACCURATE TERM FOR THAT

03:18PM **21** IS SILICON DIE OR PIECE OF SILICON. AS I SAID, IT'S ETCHED ON

03:18PM **22** THAT AND THE REST IS CALLED SUBSTRATE. SO IT IS ON THE SAME

03:18PM **23** IC, INTEGRATED CIRCUIT, OR THE SAME CHIP, ON THE SAME DIE TO

03:18PM **24** USE THE PLAIN LANGUAGE.

03:18PM **25** Q. SO IN YOUR MIND, THOSE TERMS ARE SYNONYMOUS?

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03:20PM **1** PARAMETER VARIATIONS IN ONE OR MORE FABRICATION OR OPERATIONAL

03:20PM **2** PARAMETERS ASSOCIATED WITH INTEGRATED CIRCUIT ENABLING THE

03:20PM **3** PROCESSING FREQUENCY TO TRACK CLOCK RATE IN RESPONSE TO

03:20PM **4** PARAMETER VARIATIONS.

03:20PM **5** BASICALLY WHAT IT'S SAYING, LOOK, THEY'RE MADE OUT OF SAME

03:20PM **6** TRANSISTORS. THEY ARE THE SAME. SO IF I HEAT UP THE CHIP, ALL

03:20PM **7** OF THEM WILL SLOW DOWN. IF I ELEVATE THE VOLTAGE, ALL OF THEM

03:20PM **8** WILL SPEED UP.

03:20PM **9** IN OTHER WORDS, IT'S NOT GOING TO HAPPEN WHEN ONE GOES IN

03:20PM **10** ONE DIRECTION AND ONE GOES IN THE OPPOSITE DIRECTION. THEY GO

03:20PM **11** TOGETHER.

03:20PM **12** BUT IT DOESN'T SAY FOR HOW MUCH. I MEAN, BUT JUST -- WHAT

03:20PM **13** IT REQUIRES IS THAT THEY, THEY ARE SUBJECTED TO SAME CONDITIONS

03:20PM **14** IN THE SAME PLACE SO THEY WILL VARY IN THE SAME WAY.

03:20PM **15** Q. AND WHY DID YOU THEN COLOR IN THE IC OR THE CHIP?

03:21PM **16** A. IT -- IT'S A COLOR CODING, SO WHEN YOU SEE ORANGE, YOU

03:21PM **17** KNOW WE ARE TALKING ABOUT THE ELEMENT OF VARYING TOGETHER.

03:21PM **18** Q. AND I SAID "IC OR CHIP." ARE THOSE THE SAME THING?

03:21PM **19** A. YES. INTEGRATED CIRCUIT, OR, YOU KNOW, COLLOQUIALLY WE

03:21PM **20** USE THE TERM "CHIP." I EXPLAINED WHY. IT'S JUST CHIPPED OFF

03:21PM **21** FROM THE WAFER.

03:21PM **22** I THINK WE'RE LOSING SOME PRECISION. I THINK THE COURT

03:21PM **23** HAS CONSTRUCTED THE TERM WHAT INTEGRATED CIRCUIT MEANS, AND

03:21PM **24** DEFINED IT PRECISELY BASICALLY.

03:21PM **25** AND I HAVE -- IN MY CHEAT SHEET I HAVE THE CLAIM

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