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6 HTC CORPORATION and
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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 ACER, INC., ACER AMERICA
CORPORATION and GATEWAY, INC.,

13 Plaintiffs,

14 v.

15 TECHNOLOGY PROPERTIES LIMITED,
16 PATRIOTIC SCIENTIFIC CORPORATION
and ALLIACENSE LIMITED,

17 Defendants.

18
19 HTC CORPORATION and HTC AMERICA,
INC.,

20 Plaintiffs,

21 v.

22 TECHNOLOGY PROPERTIES LIMITED,
23 PATRIOTIC SCIENTIFIC CORPORATION
and ALLIACENSE LIMITED,

24 Defendants.

Case No. 5:08-CV-00877 PSG

**STATEMENT OF NON-
OPPOSITION BY HTC
CORPORATION AND HTC
AMERICA, INC TO DEFENDANTS'
EMERGENCY MOTION TO
MODIFY CASE SCHEDULE**

Related to: Case No. 5:08-CV-00882
PSG

1 HTC supports a continuance of the case schedule by at least 150 days as requested by
2 Defendants in their Emergency Motion to Modify Case Schedule filed yesterday.¹ HTC takes no
3 position on the discovery disputes between Defendants and Acer that are outlined in that motion,
4 but it supports the requested modification for reasons unrelated to those disputes.

5 As this Court is aware, Acer, HTC, TPL and several other third parties are currently
6 involved in litigation in the ITC regarding the '336 patent-in-suit. On December 12, 2012, TPL
7 brought a motion to continue the June 24, 2013 trial in this matter until after the ALJ presiding
8 over the ITC action issues the Initial Determination on TPL's patent claims on the '336 patent.
9 (ECF No. 384 in *Acer* Action.) TPL pointed out that the trial in the present action was scheduled
10 to start almost immediately after the conclusion of the hearing in the ITC matter. (*Id.*) Acer
11 opposed the motion, but HTC did not.

12 The Court issued an order denying that motion, stating that HTC opposed TPL's
13 requested continuance. (ECF No. 416 in *HTC* Action, at 2:1-2 ("Plaintiffs Acer, Inc., et al, **and**
14 ***HTC Corp., et al***, ('Plaintiffs') oppose.") (emphasis added).) HTC did not, however, oppose
15 Defendants' request to continue the trial date. HTC supported a postponement of the trial date
16 and noted the inefficiencies that would likely result from conducting two successive trials on
17 overlapping issues in two forums. (ECF No. 414 in *HTC* Action, at 2-3.)

18 HTC's belief in this position has strengthened in light of the substantial concurrent
19 discovery that has taken place in both actions following the Court's order denying Defendants'
20 first request for a trial postponement. The concurrent discovery in the two actions has simplified
21 and streamlined the discovery process for the present action (e.g. by enabling HTC witnesses to
22 appear for deposition just once for both cases), but has also confirmed the waste of judicial and
23 party resources that would result from a jury trial on June 24, 2013. For example, both sides
24 have offered the same witnesses for depositions on the many overlapping topics. Recognizing
25 the enormous degree of overlap between the two forums, the parties recently entered into a cross-
26 use agreement allowing certain discovery obtained in the district court action to be used in the

27 _____
28 ¹ TPL filed an administrative motion to file this motion under seal thus there is no docket number
for TPL's Motion. (*See* Dkt. No. 424 in *HTC* Action.)

1 ITC forum, and vice versa, to avoid duplication to the extent possible.

2 This type of duplication, while avoidable in discovery, will be unavoidable at trial. A
3 district court trial on June 24, 2013 will be a veritable déjà vu of the ITC hearing that will have
4 completed just days prior. The jury trial will also create an unnecessary risk of potentially
5 inconsistent decisions on identical issues of fact and law. The Court can avoid these judicial
6 inefficiencies by continuing the dates by 150 days as requested by Defendants and HTC. In the
7 event this case continues following the requested postponement, the Court will have the benefit
8 of the completed proceedings before the ALJ and a full ITC evidentiary record that may further
9 streamline and guide any further proceedings in this case.

10 Dated: February 6, 2013

Respectfully submitted,

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