

[SEE SIGNATURE PAGE FOR PARTIES AND COUNSEL OF RECORD]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

Case No. 5:08-cv-00877 JW

HTC CORPORATION and HTC AMERICA,
INC.,

Plaintiffs,

v.

TECHNOLOGY PROPERTIES
LIMITED, PATRIOT SCIENTIFIC
CORPORATION and ALLIACENSE
LIMITED,

Defendants.

Case No. 5:08-cv-00882 JW

BARCO, N.V., a Belgian corporation,

Plaintiff,

v.

TECHNOLOGY PROPERTIES LTD.,
PATRIOT SCIENTIFIC CORP., and
ALLIACENSE LTD.,

Defendants.

Case No. 5:08-cv-05398 JW

**JOINT STATEMENT FOLLOWING
FIRST CLAIM CONSTRUCTION
ORDER OF JUNE 12, 2012**

[RELATED CASES]

1 The parties from the three above-captioned actions, Plaintiffs Acer Inc., Acer America
 2 Corp., and Gateway, Inc. (collectively “Acer”), HTC Corporation and HTC America Inc.
 3 (collectively “HTC”) and Barco, N.V. (“Barco”), and defendants Technology Properties Limited
 4 (“TPL”), Patriot Scientific Corporation, and Alliacense Limited (collectively “Defendants”),
 5 respectfully submit this Joint Statement pursuant to the Court’s First Claim Construction Order
 6 entered on June 12, 2012 (“Order”) (Dkt. No. 336 in *Acer* action).¹

7 **I. PROPOSED SCHEDULE FOR SUPPLEMENTAL BRIEFS**

8 The Order stated that the Court would benefit from further briefing with respect to the
 9 following two issues. First, the Court indicated that supplemental briefing was desired regarding
 10 the construction of “ring oscillator” in the context of the Talbot reference. (Order 16:14-15.) The
 11 Court further instructed that in the supplemental briefs, “the declarants shall fully articulate the
 12 technical basis for their opinions with respect to whether the voltage-controlled oscillator
 13 disclosed in Talbot is or is not a ring oscillator.” (*Id.* at 16:15-17.) The Court also indicated that
 14 supplemental briefing was desired with respect to the term “instruction register” and whether
 15 events during the prosecution history of the ’749 patent should impose a limitation on the types of
 16 operands in the instruction register. (*Id.* at 11 n.23.)

17 **Plaintiff’s Position:**

18 The Order directed the parties to provide a detailed technical explanation regarding the
 19 “ring oscillator” and “instruction register” terms. The subject matter addressed by the Court is
 20 highly technical and complex. Plaintiffs believe the most efficient way to obtain the fullest and
 21 most complete record for the Court’s benefit is to provide a schedule in which each party: (1)
 22 provides declarations from its respective technical experts regarding these issues; (2) deposes
 23 the other party’s expert witness(es); and then (3) submits Supplemental Briefing incorporating
 24

25 ¹ The Court’s order of June 12, 2012 directed that this Joint Statement be filed by June 29, 2012.
 26 However, the Court’s Electronic Case Filing (ECF) system was down and unable to accept filings
 27 throughout that day. *See* “Clerk of Court Has deemed ECF System Subject to Technical Failure
 28 for 6/28 and 6/29,” <http://www.cand.uscourts.gov/news/91>. The parties have accordingly filed
 this Joint Statement on the first court day following the June 29 outage in accordance with Civil
 Local Rule 5-1(e)(5).

1 the analysis from the experts. The Court will then have the benefit of a fully developed record
2 focused on these two important claim terms.

3 Plaintiffs also propose that the briefing schedule be deferred until the reassignment of
4 this matter from Chief Judge Ware so these matters can be taken up by the assignee judge who
5 would preside over any subsequent hearings or trial. In the alternative, if the Court is inclined
6 to enter a schedule at this time, Plaintiffs propose that each side submit its expert declarations
7 by July 20, 2012 addressing the two issues in the Order; that depositions of technical experts be
8 completed by August 3, 2012; and that opening and opposing briefs be filed simultaneously by
9 Plaintiffs and TPL by August 10 and August 17, 2012, respectively.

10 TPL's proposal set forth below is simply to have the parties submit additional briefs
11 with attached declarations, and no prior exchange of declarations and no depositions to narrow
12 the issues. Plaintiffs respectfully submit that this proposal will likely result in an evidentiary
13 record substantially the same as the one the Court has before it now, which led the Court to
14 request further briefing. Simply directing the parties to submit supplemental briefs with
15 competing expert declarations, without the benefit of a prior exchange and depositions, may
16 leave the Court with a substantially impaired ability to resolve potential disputes on complex
17 technical issues. For example, with respect to the "ring oscillator" term, the experts may take
18 different positions on whether or not the voltage-controlled oscillator disclosed in Talbot is a
19 ring oscillator. Allowing each party to depose its opponent's declarants will provide the Court
20 with an evidentiary basis to resolve the remaining disputes.

21 TPL notes below that the parties have already had discovery on Talbot. But Plaintiffs
22 never had a chance to depose TPL's expert specifically on his actual declarations. TPL also has
23 not indicated if it will rely on the same declarations or even the same expert. In addition, TPL
24 seems to be raising new arguments. For example, at the hearing, TPL's counsel appeared to
25 suggest a new argument, not reflected in the existing briefing or declarations by TPL, that the
26 Schmitt trigger in Figure 3 of Talbot somehow means there are not an odd number of inversions
27 in a loop. Hearing Tr. At 62:24-63:1 ("Talbot didn't have a ring oscillator in the sense that it
28

1 did not have a multiple number of odd inverters in a loop. It had -- it relied on something called
2 a Schmidt[sic] trigger . . .”). A deposition is needed to explore at least these new arguments.

3 **Defendants’ Position:**

4 Defendants do not believe that further depositions on these narrow points are necessary.
5 The parties have already submitted expert declarations and deposed the experts on the first issue
6 identified by the Court (Talbot). There is nothing “new” about Defendants’ position; it was set
7 out in declarations accompanying both the claim construction briefing (*see* Ex. A at ¶¶ 3-9) and
8 in opposition to HTC’s motion for summary judgment (*see* Ex. B at ¶¶ 14-20). Defendants
9 believe that Plaintiffs’ desire for discovery demonstrates that there was no clear and
10 unambiguous disclaimer—if further extrinsic evidence is required then, by definition, the
11 alleged disclaimer is not “clear and unambiguous.”

12 As for the second issue (Boufarah), the Court asked for “further briefing,” not additional
13 evidence.

14 Defendants agree to the proposed briefing schedule.

15 **II. CONSENT TO MAGISTRATE JUDGE GREWAL**

16 At this time, not all parties have agreed to consent to Magistrate Judge Grewal for
17 further proceedings. Acer and TPL are agreeable to Magistrate Judge Grewal. Barco and HTC
18 have not yet made a final determination but expect to have a decision soon.
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1 Dated: July 2, 2012

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