

Honorable Richard A. Jones

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

<p>ANCORA TECHNOLOGIES, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>HTC AMERICA, INC., a Washington Corporation, HTC CORPORATION, a Taiwanese corporation,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action No. 2:16-cv-01919 -RAJ</p> <p><b>DEFENDANTS HTC AMERICA, INC. AND HTC CORPORATION'S PRELIMINARY NON-INFRINGEMENT AND INVALIDITY CONTENTIONS</b></p>
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HTC's NON-INFRING. & INVALIDITY CONTENTIONS  
Case No. 2:16-cv-1919-RAJ

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1 Pursuant to Local Patent Rule 121 and the March 11, 2019 Scheduling Order (Dkt.  
2 No. 56), Defendants HTC America, Inc. and HTC Corporation (collectively, “HTC”) hereby  
3 provide their Preliminary Noninfringement and Invalidity Contentions.

4 **I. GENERAL STATEMENTS**

5 **A. Response to Ancora’s Identification of Asserted Claims**

6 Plaintiff’s March 26, 2019 infringement contentions assert that HTC infringes Claims 1  
7 and 2 (“the Asserted Claims”) of U.S. Patent No. 6,411,941 (“the ’941 patent”). HTC contends  
8 that each of the Asserted Claims is not infringed and is invalid for at least the reasons set forth  
9 herein.

10 **B. Claim Construction**

11 The Court has not yet construed the Asserted Claims. HTC’s position on the non-  
12 infringement and invalidity of the Asserted Claims will depend on how the claims are ultimately  
13 construed by the Court. While HTC’s position on the non-infringement of the Asserted Claims  
14 may depend on claim construction, HTC believes that entire claim limitations are absent from  
15 the accused devices. HTC’s Preliminary Noninfringement and Invalidity Contentions should not  
16 be taken as an indication of HTC’s position with regard to the proper claim construction of any  
17 claim term. Instead, HTC has made reasonable assumptions, to the extent necessary and  
18 appropriate, with respect to the meaning of claim terms for the purpose of these Preliminary  
19 Noninfringement and Invalidity Contentions only in the preparation of these contentions. If  
20 HTC determines that a different meaning is appropriate for any claim term, HTC will assert that  
21 construction in connection with claim construction procedures and proceedings, and reserves its  
22 right to update these Preliminary Noninfringement and Invalidity Contentions as a result of the  
23 claim construction hearing, or any subsequent clarification or alteration of the meaning of claim  
24 terms, or as otherwise authorized or permitted by the Federal Rules of Civil Procedure, the Local  
25 Rules, or this Court’s orders. HTC reserves all rights to further supplement or modify the  
26 positions and information in these non-infringement and invalidity contentions, including  
27 without limitation, the prior art and grounds of invalidity set forth herein.

1 **C. Ongoing Discovery and Reservation of Rights**

2 HTC has prepared these Preliminary Noninfringement and Invalidity Contentions based  
3 on information and discovery currently available to HTC. The contentions set forth herein are  
4 based on HTC's present understanding of the asserted claims and Ancora's infringement  
5 contentions. Discovery in this case is in its early stages and HTC's investigation, including  
6 HTC's search for prior art and understanding of the Android OS, is ongoing. HTC reserves the  
7 right to further supplement or alter the positions taken and information disclosed in these  
8 contentions including, without limitation, the prior art and grounds of invalidity set forth herein,  
9 to take into account information or defenses that may come to light as a result of these  
10 continuing efforts. Accordingly, HTC reserves the right to assert other bases for invalidity.  
11 HTC also reserves the right to amend or supplement these Preliminary Noninfringement and  
12 Invalidity Contentions as a result of any amendments to Ancora's infringement contentions,  
13 validity theories, or litigation positions, any new information disclosed through the Parties'  
14 experts, or in light of any claim constructions positions taken or orders issued. HTC further  
15 reserves the right to supplement these contentions as otherwise allowed by the Federal Rules of  
16 Civil Procedure, the Local Rules, or this Court's orders.

17 Except where expressly admitted, nothing in HTC's Preliminary Noninfringement and  
18 Invalidity Contentions should be construed to be an admission that HTC agrees with Ancora  
19 regarding either the scope of any of the asserted claims or any positions that Ancora may  
20 advance with respect to its infringement contentions, validity positions, or elsewhere. Nor  
21 should any inferences be drawn by the absence of any statements in these Preliminary  
22 Noninfringement and Invalidity Contentions. HTC's contentions may be in the alternative and  
23 do not constitute any concession by HTC for purposes of invalidity or noninfringement. HTC  
24 expressly reserves all claim construction and invalidity arguments.

25 HTC provides these Preliminary Noninfringement and Invalidity Contentions without  
26 waiver of any privilege or other doctrine of protection, including but not limited to the attorney-  
27 client privilege and work product doctrine. To the extent HTC inadvertently discloses

1 information that may be protected from discovery under the attorney-client privilege, work  
2 product doctrine, or any other applicable privilege or immunity, such inadvertent disclosure does  
3 not constitute a waiver of any such privilege or immunity.

4 **D. Prior Art Identification and Citation**

5 In these preliminary invalidity contentions, HTC has identified specific combinations of  
6 primary and secondary prior art references upon which it may rely to show invalidity. However,  
7 HTC could not feasibly provide written explanations of every possible combination that renders  
8 the asserted claims invalid, given the volume of highly relevant prior art. Accordingly, HTC  
9 expressly reserves the right to rely on combinations not expressly set forth herein.

10 HTC has also attempted to identify the most relevant portions of each prior art reference  
11 upon which it presently intends to rely. Given the volume of prior art and the number of relevant  
12 passages within each prior art reference, HTC could not feasibly identify every possible passage  
13 that may be relevant to the invalidity of the Asserted Claims. Accordingly, HTC expressly  
14 reserves the right to rely upon additional portions of the cited prior art references.

15 If a reference incorporates another reference, the two disclosures and their respective  
16 disclosures should be read together. In addition, the claim charts provided include exemplary  
17 descriptions and citations of where a particular claim element may be found based on Plaintiff's  
18 infringement contentions. However, the citations do not necessarily represent every place where  
19 a particular claim element may be found in the prior art reference. Therefore, HTC reserves the  
20 right to rely on additional, or different, portions of the prior art references and on other  
21 publications and expert testimony to provide context and as aids to understanding and  
22 interpreting the portions cited.

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1 **II. NONINFRINGEMENT CLAIM CHART**

2 *See* Exhibit A, attached hereto.

3 **III. IDENTIFICATION OF THE PRIOR ART**

4 At least the following prior art references anticipate or render obvious, either alone or in  
5 combination, the Asserted Claims. Because investigation and discovery in this case is ongoing,  
6 and because the Court has not yet construed the claims of the patents, HTC reserves the right to  
7 supplement or amend this disclosure. For example, HTC may seek to supplement or amend this  
8 disclosure if its investigation reveals additional prior art.

9

Prior Art Patent	First Named Inventor	Country	Issue/Publication Date
EP0766165A2	Hasebe	EPO	2/4/1997
US6,138,236	Mirov	U.S.	10/24/2000
US6,269,392	Cotichini	U.S.	7/31/2001
US5,724,425	Chang	U.S.	3/3/1998
US5,579,522	Christeson	U.S.	11/26/1996
US5,748,084	Isikoff	U.S.	5/5/1998
WO97/36241	Shipman	WIPO	10/2/1997
EP0824233A2	Angelo	EPO	2/18/1998
US4,658,093	Hellman	U.S.	4/14/1987
US5,379,342	Arnold	U.S.	1/3/1995
US4,908,861	Brachtl	U.S.	3/13/1990
US6,078,909	Knutson	U.S.	6/20/2000
US5,844,986	Davis	U.S.	12/1/1998
US5,933,498	Schneck	U.S.	8/3/1999
US6,128,605	Saito	U.S.	10/3/2000
US6,233,567	Cohen	U.S.	5/15/2001

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