

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

Honorable Richard A. Jones

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

)	Civil Action No. 2:16-cv-01919 -RAJ
ANCORA TECHNOLOGIES, INC.,)	
Plaintiff,)	DEFENDANTS HTC AMERICA, INC.
v.)	AND HTC CORPORATION'S
HTC AMERICA, INC., a Washington)	PRELIMINARY NON-INFRINGEMENT
Corporation, HTC CORPORATION, a)	AND INVALIDITY CONTENTIONS
Taiwanese corporation,)	
Defendants.)	
)	

HTC's NON-INFRINGEMENT & INVALIDITY CONTENTIONS
Case No. 2:16-cv-1919-RAJ

KNOBBE, MARTENS, OLSON & BEAR, LLP
925 Fourth Ave, Suite 2500, Seattle, WA 98104
(206) 405-2000

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.

23 ///

24 ///

25 ///

26 ///

27 ///

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

II. NONINFRINGEMENT CLAIM CHART

See Exhibit A, attached hereto.

III. IDENTIFICATION OF THE PRIOR ART

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

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



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.