

# Exhibit 1

**From:** [Ou, Philip](#)  
**To:** [Don Jackson](#); [Jay Berquist](#)  
**Cc:** [Chaikovsky, Yar R.](#); [Yen, Bruce](#); [gil@gillamsmithlaw.com](mailto:gil@gillamsmithlaw.com); [Innovation-EDTX-DBJG](#); [rsanders@somlaw.net](mailto:rsanders@somlaw.net); [Michael Young](#) ([myoung@somlaw.net](mailto:myoung@somlaw.net)); [VIS3-HTC](#)  
**Subject:** RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference  
**Date:** Tuesday, April 28, 2020 10:16:09 AM  
**Attachments:** [2020-04-24 DRAFT Rule 26\(f\) Joint Report\(102752426\\_1\).DOCX](#)  
[Appendix A - Proposed Case Schedule.docx](#)

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Don,

You and Jay had asked if we would amend the complaint to remove allegations relating to whether Innovation was subject to personal jurisdiction in E.D. Va. and why the case was filed in that venue. We did not believe amending the complaint to remove those allegations was necessary. There was no prior discussion about Innovation filing counterclaims of infringement – we were actually the first to raise that issue, and long after your deadline to file an answer or any counterclaims passed. Innovation still has not filed an answer or any counterclaims.

To remove any disputes as to venue for HTCA and whether Innovation must file mandatory counterclaims, we will file an amended complaint to remove HTCA as a DJ Plaintiff.

Also, attached is a draft of the Rule 26(f) Report. Therein, we have assumed that you will eventually file counterclaims of infringement of the 425 patent as you've indicated you will. We largely ported over statements from the Rule 26(f) Report in the 19-cv-952 Action and believe we should adopt the contingent schedule proposed there, irrespective of how the Court decides the motion to dismiss and/or consolidates.

I'm available to discuss any other outstanding Rule 26(f) Report issues for the rest of the day.

Thanks,  
Phil

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**From:** Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
**Sent:** Monday, April 27, 2020 11:27 AM  
**To:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>; Jay Berquist <[jberquist@davidsonberquist.com](mailto:jberquist@davidsonberquist.com)>  
**Cc:** Chaikovsky, Yar R. <[yarchaikovsky@paulhastings.com](mailto:yarchaikovsky@paulhastings.com)>; Yen, Bruce <[bruceyen@paulhastings.com](mailto:bruceyen@paulhastings.com)>; [gil@gillamsmithlaw.com](mailto:gil@gillamsmithlaw.com); [Innovation-EDTX-DBJG](mailto:Innovation-EDTX-DBJG@davidsonberquist.com) <[Innovation-EDTX-DBJG@davidsonberquist.com](mailto:Innovation-EDTX-DBJG@davidsonberquist.com)>; [Roger Sanders](mailto:rsanders@somlaw.net) ([rsanders@somlaw.net](mailto:rsanders@somlaw.net)) <[rsanders@somlaw.net](mailto:rsanders@somlaw.net)>; [Michael Young](mailto:myoung@somlaw.net) ([myoung@somlaw.net](mailto:myoung@somlaw.net)) <[myoung@somlaw.net](mailto:myoung@somlaw.net)>  
**Subject:** [EXT] RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

Phil,

Innovation can file counterclaims against HTC America in Texas. Recall that we asked you if HTC intended to file an amended complaint, and you indicated that it would not do so. HTCA is maintaining its complaint against Innovation. Innovation not only may, but is obligated to, file mandatory counterclaims against HTCA. Venue is directed to where a cause of action may be brought. Venue does not impact the ability to bring counterclaims and certainly not mandatory counterclaims.

Don

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**From:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>  
**Sent:** Wednesday, April 22, 2020 1:04 PM  
**To:** Jay Berquist <[jberquist@davidsonberquist.com](mailto:jberquist@davidsonberquist.com)>; Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
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**Subject:** RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

**\*EXTERNAL EMAIL\***

Jay – thanks. Our Rule 26(f) report is due Friday. We'll send you a draft by tomorrow. If you are filing a counterclaim of infringement, we think it makes sense to use the schedule we proposed in the other matter regardless of whether the Court grants our motion to dismiss. Do you agree?

Separately, to the extent you intend to file counterclaims of infringement against HTC America, we do not believe venue would be proper for such claims under *TC Heartland* and as evidenced by the fact that you have not included HTCA as a defendant in your other suits in EDTX.

Raising it now to hopefully avoid unnecessary motion practice on that issue. If you think there is a Rule 11 basis to file infringement claims against HTCA in EDTX, we'd appreciate you explaining that basis.

Finally, to the extent you believe you need to file a motion for leave or an extension of time for your answer (as I believe it is overdue), let us know. I do not believe we will oppose such a motion, but will need to confirm.

Thanks,  
Phil

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**From:** Jay Berquist <[jberquist@davidsonberquist.com](mailto:jberquist@davidsonberquist.com)>  
**Sent:** Monday, April 20, 2020 8:44 AM  
**To:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>; Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
**Cc:** Chaikovsky, Yar R. <[yarchaikovsky@paulhastings.com](mailto:yarchaikovsky@paulhastings.com)>; Yen, Bruce <[bruceyen@paulhastings.com](mailto:bruceyen@paulhastings.com)>; [gil@gillamsmithlaw.com](mailto:gil@gillamsmithlaw.com);  
Walter D. Davis <[wdavis@davidsonberquist.com](mailto:wdavis@davidsonberquist.com)>  
**Subject:** [EXT] RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

Innovation is preparing an Answer to HTC's DJ complaint – the now extraneous allegations regarding venue and jurisdiction in Virginia have complicated the response unnecessarily, but we anticipate filing our Answer within the next two days. **FYI – Innovation will be including a counterclaim asserting infringement of the '425 patent.**

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**From:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>  
**Sent:** Saturday, April 18, 2020 1:05 AM  
**To:** Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
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**Subject:** RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

**\*EXTERNAL EMAIL\***

We haven't received a response, notwithstanding the deadlines, nor have you filed a motion regarding your deadline to answer.

We'll update the Court on Monday morning. If you are available to confer before then about the Rule 26(f) requirements and the timing of your answer, let us know.

Thanks,  
Phil

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**From:** Ou, Philip  
**Sent:** Tuesday, April 14, 2020 1:27 PM  
**To:** 'Don Jackson' <[djackson@davidsonberquist.com](mailto:djackson@ davidsonberquist.com)>  
**Cc:** Chaikovsky, Yar R. <[yarchaikovsky@paulhastings.com](mailto:yarchaikovsky@paulhastings.com)>; Yen, Bruce <[bruceyen@paulhastings.com](mailto:bruceyen@paulhastings.com)>; [gil@gillamsmithlaw.com](mailto:gil@gillamsmithlaw.com); Jay Berquist <[jberquist@davidsonberquist.com](mailto:jberquist@davidsonberquist.com)>; Walter D. Davis <[wdavis@davidsonberquist.com](mailto:wdavis@davidsonberquist.com)>  
**Subject:** RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

Don – we weren't planning on amending the complaint. I don't think we have any obligation to do so, but if there is authority that you think requires us to do so if an allegation is arguably no longer relevant, we're happy to consider it.

When are you filing your answer? I believe the deadline has passed. Are you moving for leave or to extend your time?

Also, are you still unavailable to have the Rule 26f conference today or will you free up later this afternoon after your meeting?

Thanks,  
-Phil

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**From:** Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
**Sent:** Tuesday, April 14, 2020 1:07 PM  
**To:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>  
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**Subject:** [EXT] RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

Phil,

The complaint has lots of allegations relating to jurisdiction and/or venue in Virginia and why the case was brought there. Does HTC intend to file an amended complaint to streamline it and reflect that the case is in Texas? We intend to file an answer.

Don

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**From:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>  
**Sent:** Tuesday, April 14, 2020 3:02 PM  
**To:** Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
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**Subject:** RE: IS/HTC - 4:20-CV-180-ALM (DJ Action) - Rule 26(f) conference

**\*EXTERNAL EMAIL\***

Don –

The report is not due until the 24<sup>th</sup>.

We don't think the consolidated case schedule is necessarily applicable since the only issue in the case is a claim for declaratory judgment that the 425 patent is invalid under 101.

Also, I think you're deadline to answer or otherwise respond to the complaint has passed. Did we miss that?

But the deadline to have our Rule 26(f) meet and confer is today. If you are not available, are others?

Phil

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**From:** Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
**Sent:** Tuesday, April 14, 2020 11:45 AM