

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYWEE GROUP LTD.,

Plaintiff,

v.

HTC CORPORATION; and HTC AMERICA,
INC.,

Defendants.

CASE NO.: 2:17-cv-00932-JLR

JURY TRIAL DEMANDED

90-DAY JOINT STATUS REPORT

HTC CORPORATION, and HTC AMERICA,
INC.,

Third-Party Plaintiffs,

v.

CYWEE MOTION GROUP LTD.,

Third-Party Defendant.

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1 Pursuant to the Court's August 19, 2019, Order (ECF No. 146), Plaintiff CyWee Group
 2 Ltd. ("CyWee Group"), Defendants and Third-Party Plaintiffs HTC Corporation and HTC
 3 America, Inc., and Third-Party Defendant CyWee Motion Group Ltd. respectfully submit the
 4 following joint status report:

5 **The Google IPRs:**

6 On January 9, 2020, the PTAB held the following claims invalid in the two IPR
 7 proceedings filed by Google (the "Google IPRs"):

8 Asserted Patent	IPR Case No.	Original Claims Held Invalid	Proposed Contingent Amended Claims Held Invalid
9 8,441,438	IPR2018-01258	1, 3–5	20, 21
10 8,552,978	IPR2018-01257	10, 12	19, 20

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 12 CyWee appealed the PTAB's final written decisions in the Google IPRs. The Federal
 13 Circuit Court of Appeals affirmed those decisions. On April 4, 2021, CyWee filed petitions for *en*
 14 *banc* review. The Federal Circuit denied those petitions on June 3, 2021. Mandates issued on June
 15 10, 2021. On September 23, 2021, per CyWee's request, the Federal Circuit recalled the mandates,
 16 reinstated the appeals, and remanded the Google IPRs to allow CyWee the opportunity to request
 17 Director rehearing. On October 24, CyWee filed requests for *de novo* review by the Director in the
 18 Google IPRs. On January 7, 2022, the Commissioner for Patents denied review. On January 21,
 19 2022, CyWee notified the Federal Circuit of that denial, and on April 21, 2022, CyWee filed its
 20 opening brief in the appeal. On February 8, 2023, the Federal Circuit affirmed PTAB's ruling.

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 22 **The ZTE IPR:**

23 On February 17, 2021, the PTAB held all challenged claims invalid in an *inter partes*
 24 review proceeding filed by ZTE and joined by LGE (the "ZTE IPR"):
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Asserted Patent	IPR Case No.	Original Claims Held Invalid	Proposed Contingent Amended Claims Held Invalid
8,441,438	IPR2019-00143 IPR2019-01203	1, 4, 5, 14–17, 19	20-24

CyWee appealed the PTAB’s final written decision in the ZTE IPR on April 8, 2021. On June 30, 2021, CyWee filed a motion requesting that the Federal Circuit dismiss its appeal of the ZTE IPR and remand the matter to the USPTO for further proceedings in light of the Supreme Court’s recent decision in *United States v. Arthrex, Inc.*, No. 19-1434, 2021 WL 2519433 (June 21, 2021) holding that “the unreviewable authority wielded by APJs during *inter partes* review is incompatible with their appointment by the Secretary to an inferior office.” On July 14, 2021, the Federal Circuit issued an order (1) certifying CyWee’s constitutional challenge to the Attorney General, (2) directing the Attorney General to inform the Court within 30 days whether the United States intends to intervene and if so to file any response to CyWee’s motion to remand, (3) ordering appellee to file any response within that 30-day timeframe, and (4) staying the briefing schedule in the appeal. On August 13, 2021, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office informed the Federal Circuit of its intention to intervene and filed a response. On September 24, 2021 (“September 24 Order”), per CyWee’s request, the Federal Circuit remanded the ZTE IPR to allow CyWee the opportunity to request Director rehearing. On October 25, CyWee filed a request for *de novo* review by the Director in the ZTE IPR. On January 7, 2022, the Commissioner for Patents denied review. On January 21, 2022, CyWee notified the Federal Circuit of that denial. On March 28, 2022, the Federal Circuit ordered that CyWee’s brief is due no later than 60 days from the date of filing of the updated certified list, and on July 15, 2022, CyWee filed its opening brief in the appeal. On September 23, 2022, Intervenor Katherine K. Vidal and the appellees each filed a respective

1 responsive brief. On November 14, 2022, CyWee filed its reply brief. Oral argument was held on
2 September 6, 2023. The appeal is pending.

3 Because the matters described above may affect claims in this case, neither party requests
4 lifting the stay at this time.

5 Dated October 31, 2023

6 Respectfully submitted,

7 /s/ Carmen E. Bremer

8 Carmen E. Bremer, WSBA 47,565
9 Carmen.bremer@bremerlawgroup.com
10 BREMER LAW GROUP PLLC
11 1700 Seventh Avenue, Suite 2100
12 Seattle, WA 98101
13 T: (206) 357-8442
14 F: (206) 858-9730

15 Michael W. Shore* (mshore@shorefirm.com)
16 Chijioke E. Offor* (coffor@shorefirm.com)
17 Halima Shukri Ndai* (hndai@shorefirm.com)
18 THE SHORE FIRM LLP
19 901 Main Street, Suite 3300
20 Dallas, Texas 75202
21 T: (214) 593-9110
22 F: (214) 593-9111
23 *Admitted pro hac vice

24 *Attorneys for Plaintiff CyWee Group Ltd. and*
25 *Third-Party Defendant CyWee Motion Group Ltd.*

26 Dated: October 31, 2023

27 /s/ Ryan R. Smith

James C. Yoon, CA Bar #177155 (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: jyoon@wsgr.com,

1 Gregory L. Watts, WSBA #43995
2 Ryan R. Smith, WSBA #57331
3 **WILSON SONSINI GOODRICH & ROSATI**
4 Professional Corporation
5 701 Fifth Avenue, Suite 5100
6 Seattle, WA 98104-7036
7 Telephone: (206) 883-2500
8 Facsimile: (206) 883-2699
9 Email: gwatts@wsgr.com, rsmith@wsgr.com

7 Jamie Y. Otto, CA Bar #295099 (*pro hac vice*)
8 Ty W. Callahan, CA Bar #312548 (*pro hac vice*)
9 **WILSON SONSINI GOODRICH & ROSATI**
10 Professional Corporation
11 633 West Fifth Street, Suite 1550
12 Los Angeles, CA 90017-2027
13 Telephone: (323) 210-2900
14 Facsimile: (866) 974-7329
15 Email: jotto@wsgr.com, tcallahan@wsgr.com

*Attorneys for Defendants and Third-Party Plaintiffs
HTC Corporation and HTC America, Inc.*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on October 31, 2023, I electronically filed the foregoing with
17 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to
18 all counsel of record.

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20 /s/Carmen E. Bremer
Carmen E. Bremer