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1 2		THE HONORABLE JAMES L. ROBART
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5	INUTED STATES DI	
6 7	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
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9	CYWEE GROUP LTD.,	CASE NO.: 2:17-cv-00932-JLR
10	Plaintiffs, v.	DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS
11	HTC CORPORATION; and HTC AMERICA,	PURSUANT TO RULE 12(b)(6)
12	INC.,	NOTE ON MOTION CALENDAR:
13	Defendants.	November 17, 2017
14		JURY DEMAND
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	DEFENDANTS' REPLY BRIEF IN SUPPORT OF	WILSON SONSINI GOODRICH & ROSATI 701 Eigh Avenue Suite \$100

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I. INTRODUCTION

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CyWee concedes that it failed to expressly allege acts sufficient to support a claim of indirect infringement. Nevertheless, CyWee argues that the Court should deny HTC's motion to dismiss the inducement claims on the ground that the Court may reasonably infer from CyWee's Amended Complaint and attached materials that HTC actively induces infringement by its customers and end users. This argument is without merit. It is not enough for CyWee to simply rely on factual allegations that focus on direct infringement. The allegations do not address, even by inference, the requisite elements of induced infringement. None of the allegations that CyWee points to in its Opposition is sufficient to support an inference that HTC specifically intended and took affirmative steps to induce its customers to infringe. Further, CyWee's Opposition cannot rebut the clear showing in support of the motion to dismiss by introducing, for the first time, HTC-specific materials that could relate to the patented technology, but which were not part of the actual allegations of the Amended Complaint. *See Seoul Laser Dieboard Sys. Co.*, No. 12-cv-02427, 2013 WL 3761535, at *5 (S.D. Cal. July 16, 2013).

For these reasons and others discussed below, the Court should grant HTC's motion to
dismiss. However, because this case is still in its infancy without a schedule set, HTC does not
oppose CyWee's request for leave to amend.

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II. CYWEE FAILS TO STATE A CLAIM FOR INDIRECT INFRINGEMENT

19 The parties do not dispute that "[t]o state a claim for induced infringement, a plaintiff must allege facts plausibly showing (1) the defendant knew of the patent, (2) the defendant knew 20 21 that the induced acts constitute patent infringement, and (3) that the defendant specifically intended its customers to infringe." Opp'n at 2 (citing Brooks Mfg. Co. v. Dis-Tran Wood Prod., 22 23 LLC, No. 11-cv-00309, 2011 WL 13127155, at *2 (W.D. Wash. Nov. 3, 2011)). "[I]nducement 24 must involve the taking of affirmative steps to bring about the desired result." *Global-Tech*. 25 Appliances, Inc. v. SEB S.A., 563 U.S. 754, 760 (2011). However, rather than sufficiently pleading these elements, CyWee asks the Court to infer induced infringement from its allegations 26 27

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of direct infringement—allegations that rely almost entirely on materials distributed by a third party. Third-party materials do not-and, indeed, cannot-support an inference regarding what HTC specifically intended its customers to do. Because CyWee's direct infringement allegations are silent regarding HTC's specific intent and affirmative steps to induce, CyWee fails to plead facts sufficient to plausibly show that HTC induced infringement and fails to satisfy the pleading requirements of *Twombly* and *Iabal* for its indirect infringement claims. 6

Because CyWee Relies on Third-Party Materials to Plead Direct A. Infringement, Inferring Specific Intent and Affirmative Steps by HTC Is Improper and Insufficient to Sustain a Claim of Inducement.

9 Liability for induced infringement requires not only knowledge of the patents but 10 knowledge that the allegedly induced acts constitute infringement. *Id.* at 764-766. Even if the Court finds that CyWee adequately pleaded knowledge that the induced acts constitute 11 infringement, a claim for induced infringement "must contain facts plausibly showing that 12 13 [Defendant] specifically intended [its] customers to infringe the [patent-in-suit] and knew that the customer's acts constituted infringement." In re Bill of Lading Transmission and Processing Sys. 14 Patent Litig., 631 F.3d 1323, 1339 (Fed. Cir. 2012); see also Pragmatus AV, LLC v. TangoMe, 15 Inc., No. 11-cv-01092, 2013 U.S. Dist. LEXIS 19075, at *33 (D. Del. Feb. 13, 2013) 16 17 ("inducement requires evidence of culpable conduct, directed to encouraging another's 18 infringement, not merely that the inducer had knowledge of the direct infringer's activities") 19 (citation omitted). "Instead of requiring strict specific intent, then, courts typically allow juries to construct the required intentionality out of evidence that the defendant deliberately exploits the 20 21 *potential* for the product to be used in infringement. Such evidence ordinarily consists of knowledge that the accused product may be and is used to infringe the patent-in-suit plus some 22 23 other factor *indicating the defendant's desire to 'attract users of a mind to infringe.*" Tierra Intelectual Boringuen, Inc. v. ASUS Computer Int'l, Inc., No. 13-cv-00038-JRG, 2014 U.S. Dist. 24 25 LEXIS 28249, at *11-12 (E.D. Tex. Mar. 3, 2014) (emphasis added) (citing Metro-Goldwvn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 926 (2005)). "To plead allegations of 26

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specific intent sufficient to state an indirect infringement claim, the patentee need not cite 1 2 statements from the accused infringer specifically instructing the direct infringer 'to perform all 3 of the steps of the patented method'; it is enough to cite examples where the accused infringer advertised benefits that can be achieved only through use of the asserted patent." CAP Co., Ltd. 4 5 v. McAfee, Inc., Nos. 14-cv-05068 & 14-cv-05071, 2015 WL 3945875, at *15-16 (N.D. Cal. June 26, 2015) (citing In re Bill of Lading, 680 F.3d at 1341-42). Here, CyWee neither cites to 6 7 statements from HTC specifically instructing the direct infringer to perform any steps of the 8 patented method nor provides any examples where HTC advertised benefits that can be achieved 9 only through the use of the Asserted Patents.

The only HTC "advertising" cited by CyWee are product descriptions listing all the major hardware components contained in HTC's accused smartphones. *See* Opp'n at 6 ("[T]hose claim charts specifically identify a product specification published by HTC in which it touts inclusion of an accelerometer, gyroscope, and magnetometer, which are key components of the patents-in-suit."). As shown below, these technical specifications do not provide a reasonable inference that HTC specifically intended or intends to induce infringement by its customers:

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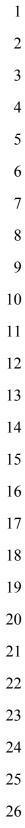
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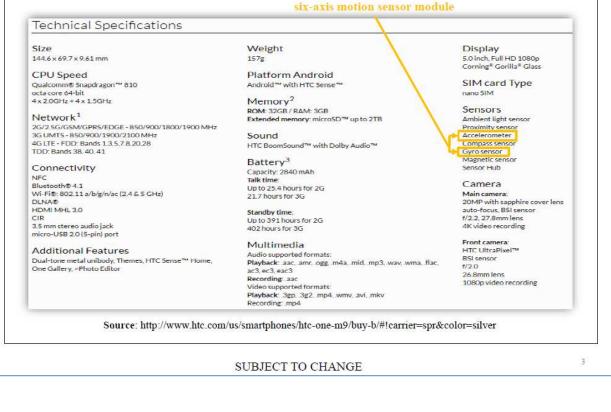
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A method for obtaining a resulting deviation including resultant angles in a spatial pointer reference frame of a three-dimensional (3D) pointing device utilizing a six-axis motion sensor module therein and subject to movements and rotations in dynamic environments in said spatial pointer reference frame, comprising the steps of:



Am. Compl., Ex. A at 3.

Claim 14

In fact, the bulk of the remaining materials cited by CyWee are from a third-party source. Beyond generic stock photos of HTC's accused smartphones and the aforementioned hardware component lists, CyWee's claim charts are entirely based on documentation published by Google for Google's Android operating system:

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