

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

CYWEE GROUP LTD.,

Plaintiff,

v.

HTC CORPORATION; and HTC

AMERICA, INC.,

Defendants.

Civil Action No. 17-cv-932-JLR

SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff CyWee Group Ltd. (“Plaintiff” or “CyWee”), by and through its undersigned counsel, files this Second Amended Complaint against Defendants HTC Corporation and HTC America, Inc. as follows:

THE PARTIES

1. CyWee is a corporation existing under the laws of the British Virgin Islands with a principal place of business at 3F, No. 28, Lane 128, Jing Ye 1st Road, Taipei, Taiwan 10462.

1 2. CyWee is a world-leading technology company that focuses on
2 building products and providing services for consumers and businesses. CyWee has
3 one of the most significant patent portfolios in the industry, and is a market leader
4 in its core development areas of motion processing, wireless high definition video
5 delivery, and facial tracking technology.

6 3. On information and belief, Defendant HTC Corporation (“HTC Corp.”)
7 is a Taiwanese corporation with a principle place of business at No. 23, Xinghua
8 Road, Taoyuan District, Taoyuan, 330, Taiwan. HTC Corp. manufactures and
9 provides to the United States a wide variety of products and services, including
10 consumer electronics such as mobile phones and tablets.

11 4. On information and belief, Defendant HTC America, Inc. (“HTC
12 America”) is a Washington corporation with a principal place of business located at
13 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. Upon information
14 and belief, HTC America is a wholly-owned subsidiary of HTC Corp. Upon
15 information and belief, HTC America is HTC Corp.’s United States business with
16 respect to mobile phones and tablets, and HTC America imports, sells, offers for
17 sale, and markets HTC Corp.’s mobile phones and tablets in the United States.

18 5. Defendants HTC Corp. and HTC America are collectively referred to
19 as “Defendants” or “HTC.” HTC is doing business in the United States and, more
20 particularly, in the State of Washington and the Western District of Washington, by
21 designing, marketing, making, using, selling, importing, and/or offering for sale
22 products that infringe the patent claims involved in this action or by transacting other
23 business in this District.

24 **JURISDICTION AND VENUE**

25 6. This action arises under the patent laws of the United States, 35 U.S.C.
26

1 § 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
2 and 1338(a).

3 7. This Court has personal jurisdiction over each Defendant. Each
4 Defendant has conducted and does conduct business within the State of Washington.
5 Each Defendant has purposefully and voluntarily availed itself of the privileges of
6 conducting business in the United States, the State of Washington, and the Western
7 District of Washington by continuously and systematically placing goods into the
8 stream of commerce through an established distribution channel with the expectation
9 that they will be purchased by consumers in the Western District of Washington.
10 Additionally, Defendants have previously submitted to this Court's jurisdiction by
11 availing themselves of this court's authority and filing suit in this district. *See HTC*
12 *Corp. and HTC Am., Inc. v. Telefonaktiebolaget LM Ericsson and Ericsson Inc.*, No.
13 2:17-cv-00534 (W.D. Wash. Apr. 6, 2017). Plaintiff's causes of action arise directly
14 from Defendants' business contacts and other activities in the State of Washington
15 and the Western District of Washington. Additionally, HTC America is incorporated
16 in Washington. Accordingly, this Court has personal jurisdiction over HTC America
17 in that it resides in this District.

18 8. Upon information and belief, each Defendant has committed acts of
19 infringement in this District giving rise to this action and does business in this
20 District, including making sales and/or providing service and support for their
21 respective customers in this District. Defendants purposefully and voluntarily sold
22 one or more of their infringing products with the expectation that they would be
23 purchased by consumers in this District. These infringing products have been and
24 continue to be purchased by consumers in this District. Defendants have committed
25 acts of patent infringement within the United States, the State of Washington, and
26

1 the Western District of Washington.

2 9. Venue is proper as to HTC America under 28 U.S.C. § 1400(b) in that
3 HTC America is incorporated in Washington and, therefore, resides in this District.
4 *TC Heartland LLC v. Kraft Food Grps. Brands LLC*, 581 U.S. ___, 2017 WL
5 2216934, at *8 (2017).

6 10. Venue is proper as to HTC Corp. under 28 U.S.C. § 1391(c)(3) in that
7 it is not a resident of the United States and may, therefore, be sued in any judicial
8 district. *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 714
9 (1972).

10 11. Upon information and belief, HTC America is an agent of HTC Corp.
11 and is held out to the public as such. *See, e.g.*, [http://www.htc.com/us/terms](http://www.htc.com/us/terms/copyright/)
12 [/copyright/](http://www.htc.com/us/terms/copyright/) (last visited June 9, 2017) (naming HTC America as HTC Corp.'s
13 “Copyright Agent”); [https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-](https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-america-as-the-company-struggles-to-turn-itself-around)
14 [america-as-the-company-struggles-to-turn-itself-around](https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-america-as-the-company-struggles-to-turn-itself-around) (last visited June 9, 2017)
15 (describing layoff at HTC’s America division with statement from HTC Corp.
16 regarding its decision as to the layoff).

17 12. Further, upon information and belief, HTC America operates under the
18 “HTC” trademark; offers, sells, services, and/or distributes only HTC products; and
19 coordinates its policies and operations with those of HTC Corp. to benefit and
20 primarily serve the interests of HTC Corp. Upon information and belief, for
21 consumers of the products accused in this Complaint, there is no substantive
22 difference between HTC America and HTC Corp.

23 13. Accordingly, venue is further proper as to HTC Corp. under 28 U.S.C.
24 § 1400(b) in that, upon information and belief, HTC Corp. has a regular and
25 established place of business in this District—namely, the place of business of its
26

1 subsidiary/agent, HTC America—and has committed acts of infringement herein.

2 BACKGROUND

3 14. The Industrial Technology Research Institute (“ITRI”) is a Taiwanese
4 government- and industry-funded research and development center. In 2007,
5 CyWee, which was started at ITRI, was formed. Its goal was to provide innovative
6 motion-sensing technologies, such as those claimed in the patents-in-suit. Dr. Shun-
7 Nan Liu and Chin-Lung Li, two of the inventors of the patents-in-suit, came to
8 CyWee from ITRI. The third inventor, Zhou “Joe” Ye joined CyWee from private
9 industry as its President and served as CEO from 2006 to 2016.

10 15. The inventors, Zhou Ye, Chin-Lung Li, and Shun-Nan Liou, conceived
11 of the claims of the patents-in-suit—U.S. Patent No. 8,441,438 (the “’438 Patent”)
12 and U.S. Patent No. 8,552,978 (the “’978 Patent”)—at CyWee Group Ltd., located
13 at 3F, No. 28, Lane 128, Jing Ye Road, Taipei.

14 16. Several claims of the patents-in-suit are entitled to a priority date of at
15 least January 6, 2010 based on U.S. Provisional Application Serial No. 61/292,558,
16 filed January 6, 2010 (“Provisional Application”).

17 17. Before May 22, 2009, CyWee began working on the “JIL Game Phone
18 Project” or “JIL Phone.” Before July 29, 2009, CyWee developed a solution for the
19 JIL Phone that practiced several claims of the ’438 Patent. Those claims were
20 diligently and constructively reduced to practice thereafter through the filing of the
21 Provisional Application and were diligently and actually reduced to practice as
22 discussed below. Accordingly, CyWee is entitled to a priority date of at least July
23 29, 2009 for several claims of the ’438 Patent.

24 18. The JIL Phone was reduced to practice by at least September 25, 2009.
25 The JIL Phone practiced several claims of both patents-in-suit. Accordingly, CyWee
26

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.