

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYWEE GROUP LTD.,

Plaintiffs,

v.

HTC CORPORATION, and HTC AMERICA,  
INC.,

Defendants.

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

**DEFENDANTS' MOTION TO  
AMEND SCHEDULING ORDER**

**NOTE ON MOTION CALENDAR:  
APRIL 13, 2018**

HTC CORPORATION, and HTC AMERICA,  
INC.,

Third-Party Plaintiffs,

v.

STMICROELECTRONICS N.V.,  
STMICROELECTRONICS, INC., and CYWEE  
MOTION GROUP LTD.,

Third-Party Defendants.

JURY TRIAL DEMANDED

1 Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure and LCR 16(b)(5),  
2 Defendants HTC Corporation (“HTC Corp.”) and HTC America, Inc. (“HTC America”)  
3 (collectively, “HTC”) hereby move the Court to amend the case schedule provided in the Minute  
4 Order Setting Trial Dates and Related Dates (Dkt. # 42) (“Scheduling Order”). Specifically,  
5 HTC requests that the Court extend all case deadlines prior to the deadline to file dispositive  
6 motions in order to account for the addition of third-party defendants to this action following  
7 issuance of the Scheduling Order, (*see* Dkt. # 43), and to afford all third-party defendants the  
8 opportunity to participate in claim construction proceedings.

### 9 I. BACKGROUND

10 The Court issued its Scheduling Order in this case on December 14, 2017. (*See* Dkt.  
11 # 42.) At the time, the only parties in the case were HTC and Plaintiff CyWee Group Ltd.  
12 (“CyWee”). On January 11, 2018, however, HTC filed a Third-Party Complaint against  
13 STMicroelectronics N.V. (“STM N.V.”), STMicroelectronics, Inc. (“STM, Inc.”), and CyWee  
14 Motion Group Ltd. (“CyWee Motion”). (*See* Dkt. # 43.) In conjunction with its Third-Party  
15 Complaint, HTC filed three Praecipes to Issue Summons: one as to STM N.V., a corporation  
16 organized and existing under the laws of the Netherlands, (*see* Dkt. # 44); one as to STM, Inc.,  
17 a Delaware corporation with a registered agent in the State of Washington, (*see* Dkt. # 45); and  
18 one as to CyWee Motion, a corporation organized and existing under the laws of Taiwan, (*see*  
19 Dkt. # 46). On January 16, 2018, the Clerk of Court issued the aforementioned summonses.  
20 (*See* Dkt. # 47.) HTC served STM, Inc. with the Third-Party Complaint and corresponding  
21 summons on January 19, 2018. (*See* Dkt. # 50.)

22 Thus far, however, HTC has been unable to effectuate service with respect to STM N.V.  
23 and CyWee Motion. (*See* Yoon Decl.<sup>1</sup> at ¶ 8.) Because STM, Inc. is a wholly owned subsidiary  
24 of STM N.V., (*see* Dkt. # 53), and CyWee is an affiliate of CyWee Motion, (*see* Yoon Decl. at  
25 ¶ 4), counsel for HTC initially met and conferred with counsel for STM, Inc. and counsel for  
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27 <sup>1</sup> “Yoon Decl.” refers to the concurrently filed Declaration of James C. Yoon.  
28

1 CyWee regarding acceptance of service on behalf of STM N.V. and CyWee Motion,  
2 respectively, (*see id.* at ¶¶ 4-5). Specifically, counsel for HTC met and conferred with counsel  
3 for STM, Inc. on February 14, 2018. (*See id.* at ¶ 5.) And counsel for HTC met and conferred  
4 over several conversations and email communications with counsel for CyWee starting on  
5 January 12, 2018. (*See id.* at ¶ 4.) Neither STM, Inc. nor CyWee, however, agreed to accept  
6 service on behalf of its affiliate. (*See id.* at ¶¶ 4-5.)

7 After its efforts to informally negotiate acceptance or waiver of service failed, HTC  
8 retained the services of TransPerfect Legal Solutions (“TransPerfect”), a firm that specializes in  
9 translation of documents and foreign service of process, on March 7, 2018. (*See id.* at ¶ 6.)  
10 TransPerfect subsequently enlisted the assistance of Celeste Ingalls, a specialist in the service of  
11 foreign process. (*See* Ingalls N. Decl.<sup>2</sup> at lines 1-3, ¶¶ 1-2; Ingalls T. Decl.<sup>3</sup> at lines 1-3, ¶¶ 1-  
12 2.) As Netherlands is a signatory to the Convention on the Service Abroad of Judicial and  
13 Extrajudicial Documents in Civil or Commercial Matters, Done at The Hague, November 15,  
14 1965 (“the Hague Service Convention”), (*see* Ingalls N. Decl. at ¶ 3), Ms. Ingalls recommended  
15 that service as to STM N.V. be completed in accordance with the Hague Service Convention,  
16 (*see id.* at ¶¶ 4-11). This process generally takes three to four months to complete, but can  
17 occasionally exceed six months. (*See id.* at ¶ 12.) Taiwan, on the other hand, is not a signatory  
18 to the Hague Service Convention. (*See* Ingalls T. Decl. at ¶ 3.) As such, Ms. Ingalls  
19 recommended that service as to CyWee Motion be completed via letter rogatory service, (*see*  
20 *id.* at ¶¶ 4-12), which generally takes a minimum of six months to complete, but could exceed a  
21 year, (*see id.* at ¶ 13). Ms. Ingalls commenced with the proper procedures to properly and  
22 formally effect service of process on STM N.V. and CyWee Motion on March 20, 2018. (*See*  
23 Ingalls N. Decl. at ¶ 3; Ingalls T. Decl. at ¶ 3.)  
24

25 \_\_\_\_\_  
26 <sup>2</sup> “Ingalls N. Decl.” refers to the concurrently filed Declaration of Celeste Ingalls Regarding  
Service of Process in the Netherlands.

27 <sup>3</sup> “Ingalls T. Decl.” refers to the concurrently filed Declaration of Celeste Ingalls Regarding  
28 Service of Process in Taiwan.

1 In light of the above, it is likely<sup>4</sup> that STM N.V. and CyWee Motion will not be served  
 2 until the deadline for service of summons and third-party complaint has passed and claim  
 3 construction proceedings are either well underway or complete. (*Compare* Ingalls N. Decl. at  
 4 ¶ 12 (estimating service time of three to four months in the Netherlands), *and* Ingalls T. Decl. at  
 5 ¶ 13 (estimating service time of at least six months in Taiwan), *with* Dkt. # 42.) Accordingly,  
 6 HTC requests that the Court extend HTC's deadline for service of summons and third-party  
 7 complaint and delay claim construction proceedings to the extent possible,<sup>5</sup> so that all third-party  
 8 defendants—who may be bound by the Court's determinations—have the opportunity to  
 9 participate. Specifically, HTC proposes the following schedule:

Event	Current Deadline	Proposal
HTC's Deadline for Service of Summons and Third-Party Complaint	April 11, 2018	October 11, 2018
Joint Claim Chart and Prehearing Statement	April 25, 2018	July 27, 2018
Opening Claim Construction Briefs	May 18, 2018	August 2, 2018
Responsive Claim Construction Briefs	June 1, 2018	August 16, 2018
<i>Markman</i> Hearing (9:00 AM)	July 13, 2018	September 21, 2018  (Subject to the Court's availability)
Initial Expert Reports	August 24, 2018	October 23, 2018

19  
 20 <sup>4</sup> On March 16, 2018, HTC sent letters to STM N.V. and CyWee Motion requesting that they  
 21 waive service pursuant to Rule 4(d)(1)(D) of the Federal Rules of Civil Procedure. (*See* Yoon  
 22 Decl. at ¶¶ 9-10.) To date, however, HTC has received no indication that either entity is inclined  
 23 to do so. (*See id.*)

24 <sup>5</sup> HTC is mindful of this Court's decisions reflecting its preference for (1) a 35-day time period  
 25 between the deadline for completing claim construction briefing and the *Markman* hearing, *see*  
 26 *Microsoft Corp. v. Motorola, Inc.*, No. 2:10-cv-00230-JLR, slip op. at 2 (W.D. Wash. Sept. 29,  
 27 2011) (Robart, J.), (2) a discovery cut-off that precedes the deadline for filing dispositive  
 28 motions, so that the record is complete when the Court considers such motions, *see Hawkins v.*  
*United States*, No. C16-0498JLR, 2017 U.S. Dist. LEXIS 79800, at \*3-4 (W.D. Wash. May 24,  
 2017) (Robart, J.) (extending the discovery cut-off date to June 20, 2017, in view of the June 27,  
 2017 deadline for filing dispositive motions), and (3) a 105-day time period between the deadline  
 for filing dispositive motions and the trial date, *see Pac. Bioscience Labs., Inc. v. Nutra Luxe*  
*MD, LLC*, No. 2:10-cv-01823-JLR, slip op. at 2 (W.D. Wash. Apr. 2, 2012) (Robart, J.).

Event	Current Deadline	Proposal
Rebuttal Expert Reports	September 21, 2018	November 8, 2018
Deadline to Amend Pleadings	September 26, 2018	November 13, 2018
Deadline to Note Discovery Motions	October 5, 2018 [No later than the Friday before discovery closes]	November 16, 2018 [No later than the Friday before discovery closes]
Close of Discovery	October 12, 2018	November 19, 2018
Deadline to File Dispositive Motions	November 20, 2018	November 20, 2018
Deadline to Note Dispositive Motions	December 14, 2018 [No later than fourth Friday after filing]	December 14, 2018 [No later than fourth Friday after filing]
Deadline to hold Settlement Conference per CR 39.1(c)(2)	December 21, 2018	December 21, 2018
Deadline to File Motions <i>in Limine</i>	February 22, 2019	February 22, 2019
Deadline to Note Motions <i>in Limine</i>	March 8, 2019 [No later than second Friday after filing]	March 8, 2019 [No later than second Friday after filing]
Pretrial Order	March 7, 2019	March 7, 2019
Pretrial Conference (2:00 PM)	March 11, 2019	March 11, 2019
Trial Briefs, Proposed <i>Voir Dire</i> Questions and Jury Instructions	March 18, 2019	March 18, 2019
Trial (7-8 days)	March 25, 2019	March 25, 2019

## II. LEGAL STANDARD

Under Rule 16(b)(4) of the Federal Rules of Civil Procedure, “[a] schedule may be modified only for good cause and with the judge’s consent.” *See also* LCR 16(b)(5). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). In other

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