

THE HONORABLE JAMES L. ROBERT

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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

**THIRD-PARTY DEFENDANT
STMICROELECTRONICS, INC.'S
MOTION FOR SANCTIONS PURSUANT
TO RCW 4.84.185**

NOTE ON MOTION CALENDAR: JUNE 8,
2018

HTC CORPORATION, and HTC AMERICA,
INC.,

Third-Party Plaintiffs,

v.

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

Third-Party Defendants.

ORAL ARGUMENT REQUESTED

1 Third-party defendant STMicroelectronics, Inc. (“ST Inc.”) respectfully moves for fees and
2 expenses from third-party plaintiffs HTC Corporation and HTC America, Inc. (collectively,
3 “HTC”) pursuant to Washington Revised Code (“RCW”) Section 4.84.185.

4 HTC filed a third-party complaint (“TPC”) against ST Inc. and its parent company,
5 STMicroelectronics N.V. (“ST N.V.”), asserting claims for defense, indemnity, breach of
6 warranty, and contribution for the patent infringement allegations brought against HTC by
7 plaintiff CyWee Group Ltd. (“CyWee”). However, there are no arguably relevant contracts or
8 purchase orders between HTC and ST Inc. Nor has ST Inc. ever sold or supplied accused products
9 to HTC, or agreed to defend and indemnify HTC for any third-party patent infringement
10 allegations. Additionally, no ST-branded product is accused by CyWee of patent infringement in
11 the underlying litigation—rather, CyWee’s allegations of infringement have at all times been
12 directed towards HTC’s wireless communications devices, which utilize Google’s Android
13 operating system and a Qualcomm chip.

14 HTC clearly knew that its claims were frivolous, yet pursued them anyway before
15 ultimately opting not to oppose ST Inc.’s motion to dismiss. Unfortunately, HTC remains
16 undeterred. It is continuing its pursuit of ST N.V., and recently moved for leave to amend the
17 TPC to add yet another foreign entity, STMicroelectronics Asia Pacific Pte. Ltd. (“ST Asia”),
18 even though there are still no ST-branded products accused of patent infringement by CyWee.

19 This is not ST Inc.’s fight, and it should have never been forced to spend legal fees—to the
20 tune of nearly \$60,000 before accounting for this motion—defending against HTC’s frivolous
21 claims. As such, and to deter HTC’s ongoing harassment and abuse of the judicial system—the
22 underlying policies behind RCW 4.84.185—ST Inc. respectfully requests that the Court award it
23 fees and costs incurred in defending this matter.

24 **I. Facts**

25 On July 6, 2017, CyWee filed an Amended Complaint asserting that HTC infringes two
26 CyWee patents by selling a variety of mobile phones. Dkt. # 20. CyWee’s Amended Complaint
27 specifically identified the combination of hardware components in the phones and the Android
28

1 operating system as the basis for alleged infringement, and attached claim charts reflecting that
2 position. E.g., Dkt. # 20 at ¶¶ 38-39. For example, in its Amended Complaint, CyWee identified
3 “https://android.google.com” as the source of the accused computer code. Dkt. # 20, Exh.
4 A, pp.4-9. Nowhere in the Amended Complaint did CyWee identify an ST-branded product.

5 Nevertheless, on October 2, 2017, HTC sent a letter addressed jointly to ST Inc. and ST
6 Asia, a foreign affiliate of ST Inc. based in Singapore, demanding defense and indemnification of
7 CyWee’s patent infringement claims. *See* Dkt. # 66, Exh. A. The letter enclosed a purchase order
8 dated July 28, 2017, in which HTC Corporation sought to order microcontrollers from ST Asia.
9 *Id.* That purchase order specifies that dispute resolution must occur in Taiwan. *Id.* at ¶ 12. ST
10 Inc. did not receive, fulfill, or play any role in connection with this purchase order. Dkt. # 65, ¶ 3.
11 Nor has ST Inc. ever sold or supplied to HTC the microcontroller product referenced in the
12 purchase order (STM32F411CEYTR), or any product similar thereto. *Id.*

13 On December 29, 2017, CyWee served its infringement contentions on HTC (pursuant to
14 Local Patent Rule 120), which again focused on Android computer code and a Qualcomm chip.
15 Dkt. 66, Exh. B. The infringement contentions make no mention of any ST-branded product. *Id.*

16 Undeterred, on January 11, 2018, HTC filed the TPC against ST Inc. and ST N.V.,
17 asserting claims for defense and indemnification, breach of warranty, and contribution.¹ Dkt. #
18 43. The TPC did not identify any particular part numbers of products allegedly supplied by ST
19 Inc. or ST N.V., or particular purchase order agreements. Rather, the TPC alleged that ST Inc. and
20 ST N.V. (collectively, “STM”) “sold and supplied to HTC certain motion sensor devices and
21 technology, including the Sensor Fusion Hub . . . pursuant to purchase order agreements that
22 obligate STM to defend and indemnify HTC with respect to claims of patent infringement.” *Id.* at
23 ¶ 32.

24 On March 9, 2018, CyWee filed a Second Amended Complaint, which maintained the
25 same core infringement allegations against HTC. Dkt. # 61. In other words, CyWee continued to
26

27 ¹ The TPC also names CyWee Motion Group Ltd. as a third-party defendant and asserts an additional claim against
28 that entity.

1 allege that HTC infringes two CyWee patents based on the combination of hardware components,
2 including a Qualcomm chip, and the Android operating system. Dkt. # 61, Exhs. A-B.

3 HTC still did not withdraw the TPC. Instead, ST Inc. was forced to file a motion to
4 dismiss, explaining that it had no connection to this litigation whatsoever, and that, even if it had
5 supplied products to HTC or agreed to defense and indemnification (which it did not), CyWee has
6 consistently identified Android software and a Qualcomm chip within the accused HTC handsets,
7 and not any ST-branded product, as the basis for its patent infringement claims. Dkt. # 64. HTC
8 did not oppose ST Inc.'s motion to dismiss (Dkt. # 77), and the Court granted it on April 23, 2018.
9 Dkt. # 79.

10 ST Inc. incurred \$57,351.06 in fees and costs up through the Court's dismissal, which
11 includes fees and costs associated with analyzing HTC's TPC, attempting to negotiate dismissal
12 without the need for motion practice, and ultimately filing its motion to dismiss. *See* Declaration
13 of Matt Berkowitz in Support of STMicroelectronics, Inc.'s Motion for Sanctions ("Berkowitz
14 Decl.," filed concurrently with this motion.² ST Inc. has already incurred in excess of \$7,500 in
15 additional fees associated with this motion, and will likely incur more unless HTC elects not to
16 oppose. *Id.*

17 Despite HTC's prior statement of non-opposition to ST Inc.'s motion to dismiss, it
18 continues to pursue the same claims against ST N.V. (*See* Dkt. # 68), and, more recently, has
19 moved for leave to add yet another entity, ST Asia, as an additional third-party defendant. Dkt. #
20 87. HTC has never explained why these companies are differently-situated than ST Inc., given
21 that CyWee has never accused ST-branded products, and the only purchase order HTC could
22 possibly be relying upon provides for dispute resolution in Taiwan.

23 **II. Argument**

24 RCW 4.84.185 provides:

25 In any civil action, the court having jurisdiction may, upon written findings by the
26 judge that the action, counterclaim, cross-claim, third party claim, or defense was
27 frivolous and advanced without reasonable cause, require the nonprevailing party to
pay the prevailing party the reasonable expenses, including fees of attorneys,

28 ² ST Inc. can submit billing records for the Court's review upon the Court's request.

1 incurred in opposing such action, counterclaim, cross-claim, third party claim, or
2 defense. This determination shall be made upon motion by the prevailing party
3 after a voluntary or involuntary order of dismissal, order on summary judgment,
4 final judgment after trial, or other final order terminating the action as to the
5 prevailing party. The judge shall consider all evidence presented at the time of the
6 motion to determine whether the position of the nonprevailing party was frivolous
7 and advanced without reasonable cause. In no event may such motion be filed more
8 than thirty days after entry of the order.

9 A frivolous action, for purposes of this statute, is one that “cannot be supported by any
10 rational argument on the law or facts.” *Eller v. East Sprague Motors & R.V.’s, Inc.* 244 P.3d 447,
11 453 (Wash. Ct. App. 2010) (quoting *Clarke v. Equinox Holdings, Ltd.*, 783 P.2d 82, review
12 *denied*, 777 P.2d 1050 (Wash. 1989)). The action or lawsuit is to be interpreted as a whole. *Biggs*
13 *v. Vail*, 830 P.2d 350, 352 (Wash. 1992). However, a showing of bad faith is not required; “[i]t is
14 enough that the action is not supported by any rational argument and is advanced without
15 reasonable cause.” *Eller*, 244 P.3d at 453 (reversing trial court’s denial of a fees award on the
16 basis that a showing of bad faith is not required).

17 Washington courts have awarded fees under this section where claims, such as those
18 advanced here by HTC, are brought and maintained without any supporting evidence. *See, e.g.*,
19 *Integrity Trust by Cuddeback v. Capital One, N.A.*, No. 16-927, 2017 WL 2839819, *2 (W.D.
20 Wash. April 5, 2017) (awarding attorneys’ fees where Plaintiff “knowingly filed a baseless lawsuit
21”); *Lucas v. Camacho*, No. 11-5350, 2012 WL 4120310, *2 (W.D. Wash. Sept. 18, 2012)
22 (awarding attorneys’ fees when plaintiffs failed to submit admissible evidence in support of their
23 claims in a motion for summary judgment); *Tracy v. State of Wash.*, No. 09-5588, 2010 WL
24 5395029, *4 (W.D. Wash. Dec. 27, 2010) (awarding attorneys’ fees after summary judgment
25 when plaintiffs made no arguments regarding defendant and did not present any evidence showing
26 defendant was liable under any causes of action stated in the complaint); *Grace v. Hagy*, No.
27 62902-6-I, 2009 WL 3808574, *3 (Wash. Ct. App. 2009) (awarding attorneys’ fees when plaintiff
28 responded to defendant’s motion to dismiss by withdrawing plaintiff’s initial claims and
replacing them with equally meritless claims).

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