EXHIBIT A

Miscellaneous Docket No. _____

United States Court of Appeals for the Federal Circuit

IN RE HTC CORPORATION AND HTC AMERICA, INC.,

Petitioners.

On Petition for a Writ of Mandamus to the U.S. District Court for the Eastern District of Texas in Case Nos. 2:13-cv-895 Judge Rodney Gilstrap

PETITION FOR WRIT OF MANDAMUS FOR HTC CORPORATION AND HTC AMERICA, INC.

MICHAEL J. BETTINGER
CURT HOLBREICH
IRENE YANG
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111
415-882-8200
415-882-8220 facsimile

Attorneys for Petitioners HTC Corporation and HTC America, Inc.

August 20, 2014

CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4(a) and Federal Rule of Appellate Procedure 26.1, counsel for Petitioners HTC Corporation and HTC America, Inc. ("HTC") certifies the following:

1. The full name of every party represented by the undersigned is HTC Corporation and HTC America, Inc.

2. There are no other real parties in interest represented by the undersigned.

3. The parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties represented by the undersigned are: HTC Corporation, which owns HTC America, Inc.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by the undersigned in the trial court or are expected to appear in this Court, are:

Michael J. Bettinger
Curt Holbreich
Irene Yang
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111

DATED: August 20, 2014

Michael J. Bettinger
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94131
415-882-8200

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont'd)

Page

TABLE OF AUTHORITIES

Page (s)

CASES

TABLE OF AUTHORITIES (cont'd)

Page

STATUTES

RELIEF SOUGHT

HTC Corporation and HTC America, Inc. (collectively "HTC") respectfully petition for a writ of mandamus directing the United States District Court for the Eastern District of Texas (the "Texas court") to vacate its order denying transfer or stay of this action, and to either transfer this action to the Northern District of California, or stay this action until resolution of the action filed by Google Inc. in the Northern District of California.

ISSUES PRESENTED

1. Did the Texas court clearly abuse its discretion by not giving precedence to Google's California action?

2. Did the Texas court clearly abuse its discretion by not analyzing convenience factors in view of the precedence to be given Google's California action?

3. Did the Texas court clearly abuse its discretion in refusing to stay this action until resolution of Google's California action?

SUMMARY OF ARGUMENT

HTC joins the separate petition for writ of mandamus, Misc. No. 2014-147, filed by Google Inc. ("Google") on August 14, 2014. HTC writes separately to explain why the patent case that Rockstar Consortium US LP and MobileStar Technologies LLC (collectively "Rockstar") filed against Android customer HTC

in Texas should be transferred to California, where the suit filed by Android manufacturer Google is already pending.

The facts are not in dispute. Rockstar filed suit in the Eastern District of Texas alleging that HTC devices "having a version (or an adaption thereof) of Android operating system" infringe seven different patents. A0015-0046 ¶¶ 18, 28, 44, 59, 74, 89 and 104. In response, Google, as the manufacturer of the Android operating system, filed a declaratory judgment action in the Northern District of California. Google's California complaint asserts that HTC is a Google Android customer, and that no version of the Android platform infringes any of the seven asserted patents. A0061-0062 ¶¶ 17, 25.

Rockstar, in turn, moved to transfer the California action filed by Android-manufacturer Google to the Eastern District of Texas. Judge Wilken, Chief Judge of the Northern District of California, denied Rockstar's motion. Chief Judge Wilken correctly concluded that Google's manufacturer suit takes precedence over the Texas actions filed against Android customers such as HTC, and that Texas is not a more convenient forum. With Google's suit remaining in California, Chief Judge Wilken recognized that the Texas suits against Android customers like HTC could be transferred to California, or stayed.

In line with Chief Judge Wilken's suggestion, HTC had filed its own motion to transfer the Texas case to California or, in the alternative, stay the Texas case

until Google's manufacturer suit was resolved. The Texas court denied HTC's motion and, in doing so, did not even acknowledge Chief Judge Wilken's earlier ruling, much less follow her careful and thorough analysis. Instead, the Texas court incorrectly applied the law, erroneously holding HTC to the burden of showing that California was a "clearly more convenient forum" without acknowledging the precedence that the Northern District of California should be given as the forum of the manufacturer suit. A0008.

The Texas court's error constitutes a clear abuse of discretion in at least three ways: (1) The Texas court did not give precedence to the suit filed by Android manufacturer Google in California; (2) the Texas court did not analyze convenience factors within the context of this precedence; and (3) the Texas court refused to stay the Texas action pending resolution of Google's California action. Each of these errors is a clear abuse of discretion, and HTC respectfully requests that this Court correct the Texas court's error.

STATEMENT OF RELEVANT FACTS

A. The Parties.

1. Nortel, Rockstar and MobileStar.

Google, in its separate petition for writ of mandamus, sets out the relevant facts surrounding the original ownership of the Asserted Patents by Canada-based Nortel Networks, Rockstar Bidco's purchase of the Asserted Patents through a bankruptcy auction conducted in New York, and the transfer of selected Asserted

Patents to MobileStar, literally on the eve of Rockstar's Android lawsuits. For the convenience of the Court, HTC adopts those facts from Google's separate petition for writ of mandamus, Misc. No. 2014-147, filed on August 14, 2014.

2. HTC.

HTC Corporation is based in Taiwan. A0078, A0650 ¶ 2. HTC America is based in Bellevue, Washington, with two affiliated company offices in the San Francisco Bay Area. A0078, A0650 ¶ 2. HTC witnesses reside in Taiwan and Washington. A0078, A0650-51 ¶¶ 8-11. HTC documents are located in Taiwan, Washington and California. A0078, A0650-51 ¶¶ 8-11. HTC sells a variety of handheld devices, including certain devices based on the Android operating system manufactured by Google. A0650 ¶ 12.

B. The Android Operating System Is at Issue in Both the California and Texas Actions.

Rockstar filed its Texas complaint on October 31, 2013, accusing HTC of infringing various patents now owned by Rockstar and MobileStar ("the Texas action"). The seven patents include U.S. Patent Nos. 5,838,551, 6,037,937, 6,128,298, 6,333,973, 6,463,131, 6,765,591 and 6,937,572 ("the Asserted Patents"). A0011-0056, A1122-1248. Rockstar's Texas complaint alleges that only HTC devices "having a version (or adaption thereof) of Android operating system" infringe the Asserted Patents. A0014 at ¶15. Rockstar does not allege that any of the non-Android devices offered by HTC (*i.e.* Windows-based devices)

infringe the patents. By Rockstar's own complaint, the only HTC devices at issue in the Texas action are those having a version of the Android operating system.

Google, the developer and manufacturer of the Android operating system, filed a complaint for declaratory judgment in the Northern District of California on December 23, 2013 ("the California action"). A0057-0069. Google's complaint seeks a declaration that "[not] any version of Google's Android platform" infringes the seven Asserted Patents. A0062 at ¶25. Google's complaint identifies HTC as a "customer" that uses the Android platform in HTC devices. A0061 at ¶17. Google's complaint is not limited to any particular version of the Android platform, or to any particular HTC devices that use the Android platform. Instead, Google's complaint broadly requests a declaration that no version of the Android platform in any HTC device infringes the Asserted Patents.

The same Android-based HTC devices are at issue in both the Texas and California cases, as set out in the respective complaints. For example, in Texas, Rockstar alleges that HTC devices "with a version (or adaption thereof) of Android operating system" infringe at least claim 13 of the '937 patent. A0018-0019 at ¶28. The same devices are at issue in the California action where Google requests "a judgment declaring that Google's Android platform …do[es] not directly or indirectly infringe any claim of the '937 patent." A0064 at ¶ 37.

Parallel allegations are made in the respective Texas and California complaints for each of the other six Asserted Patents.[1]

C. The California Court Concluded That Google's Suit Takes Precedence, and That Texas Is Not a More Convenient Forum.

In response to Google's declaratory judgment complaint in California, Rockstar moved to dismiss or, in the alternative, transfer the action to Texas. Chief Judge Wilken denied both requests.

Chief Judge Wilken's analysis was based on established Federal Circuit case law, recently reaffirmed in *In re Nintendo,* Case No. 2014-132, 2014 U.S. App. LEXIS 12707, at *4-5, that a manufacturer's suit takes precedence. The California court articulated the standard as follows: "Where the earlier action is an infringement suit against a mere customer and the later suit is a declaratory judgment action brought by the manufacturer of the accused devices," the manufacturer suit generally takes precedence. A0940. The California court found that "the relationships between Google and the [Texas] defendants is one of

---

[1] For the '298 patent, compare ¶ 44 of the Texas complaint (A0023-0024) with ¶ 43 of the California complaint (A0065). For the '551 patent, compare ¶ 18 of the Texas complaint (A0015) with ¶ 31 of the California complaint (A0064). For the '973 patent, compare ¶ 59 of the Texas complaint (A0029) with ¶ 49 of the California complaint (A0066). For the '131 patent, compare ¶ 74 of the Texas complaint (A0034) with ¶ 55 of the California complaint (A0067). For the '591 patent, compare ¶ 89 of the Texas complaint (A0040) with ¶ 61 of the California complaint (A0068). For the '572 patent, compare ¶ 104 of the Texas complaint (A0046) with ¶ 67 of the California complaint (A0069).

manufacturer and customer." *Id*. Accordingly, Chief Judge Wilken concluded that, "[b]ecause the determination of the infringement issues here would likely be dispositive of the other cases, and the manufacturer presumably has a greater interest in defending against charges of patent infringement than the customers, the [California] suit takes precedence." *Id.* (citing *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1081 (Fed. Cir. 1989)).

Chief Judge Wilken then turned to the convenience factors to determine whether an exception should be made to the general rule giving preference to the manufacturer suit. A0940-0944. As for the convenience of the parties, the California court observed that Google, the manufacturer of the Android operating system, is based in the Northern District of California: "Google's Android products, the target of this infringement action, were designed and created [in the Northern District.]" A0941. As for Defendant Rockstar, the California court noted that though Rockstar claims "to have substantial ties to Texas, their headquarters appear to be in Canada." A0943.

The convenience of the Northern District of California extended to key third-party witness Apple. The California court described a "direct link" between Apple's and Rockstar's actions against Google and its customers. A0934. Chief Judge Wilken first observed that Apple contributed $2.6 billion, or a controlling 58% of the $4.5 billion paid by Rockstar Bidco (a consortium consisting of Apple,

Microsoft, RIM, Ericsson, Sony and EMC) to acquire the Nortel patent portfolio. A0933. The California court noted that Rockstar's litigation strategy of suing Google's customers "is consistent with Apple's particular business interests." A0935. It noted that Rockstar limited its infringement claims in the Texas action "to Android-operating devices only" and, according to Chief Judge Wilken, "[t]his 'scare the customer and run' tactic advances Apple's interest in interfering with Google's Android business." *Id.*

Based on the foregoing, the California court concluded that the convenience factors did not overcome the precedence afforded Google's California action: "On balance, the factors do not weigh in favor of transferring the action to the Eastern District of Texas." A0944. As a practical matter, Chief Judge Wilken recognized that the customer suits in Texas could be transferred to the Northern District of California and consolidated for pretrial purposes or, in the alternative, stayed by the Texas court. A0942.

D. The Texas Court's Analysis of the Transfer Issues.

In sharp contrast, the Texas court did not give preference to the manufacturer suit filed by Google in California. Nor did the Texas court analyze the convenience factors within the context of the precedence to be given Google's

California action. In fact, the Texas court never mentioned Chief Judge Wilken's ruling, which had issued more than three months earlier.[2]

Instead, the Texas court cited the principle that "litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer" (A0004), but then never analyzed or applied that principle. To the contrary, the Texas court held Android customer HTC to the burden of showing that the Northern District of California was "clearly more convenient" than the Eastern District of Texas, and ruled that HTC had not met its burden. A0008.

STANDARD OF REVIEW

Writs of mandamus are available for "extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power." *In re TS Tech. USA Corp.*, 551 F.3d 1315, 1318 (Fed. Cir. 2008). A clear abuse of discretion occurs when the district court reaches a "patently erroneous result." *Id.* at 1319. A "district court abuses its discretion if it relies on an erroneous conclusion of law." *In re EMC Corp.*, 677 F.3d 1351, 1355 (Fed. Cir. 2012). "An abuse of discretion may be established by showing that the district court either made a clear error of

[2] Chief Judge Wilken's order denying Rockstar's motion to dismiss, or transfer, issued on April 17, 2014. A0917-0944. The Texas court's order denying HTC's motion to transfer, or in the alternative, stay issued on July 29, 2014. A0001-0010.

judgment in weighing relevant factors, or exercised its discretion based on an error of law or on findings which were clearly erroneous." *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 772 (Fed. Cir. 1993) (citing *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1039 (Fed. Cir. 1992) and *Seattle Box Co. v. Indus. Crating & Packing*, 756 F.2d 1574, 1581 (Fed. Cir. 1985)). "If the district court clearly abused its discretion," the moving party's "right to issuance of the writ is necessarily clear and indisputable." *In re TS Tech.*, 551 F.3d at 1318-19; *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc).

REASONS WHY THE WRIT SHOULD ISSUE

I. THE TEXAS DISTRICT COURT CLEARLY ABUSED ITS DISCRETION BY NOT GIVING PRECEDENCE TO GOOGLE'S CALIFORNIA ACTION.

When a manufacturer files a suit for declaratory relief of non-infringement in response to an earlier filed suit against customers, the manufacturer's suit takes precedence. *See Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F.3d 1349, 1357 (Fed. Cir. 2011). This case fits neatly within the rule. As Google confirms, HTC is a customer of Google's Android platform. A0061 ¶ 17. The Texas action against Android customer HTC, alleging that HTC devices running any version of the Android operating system infringe the Asserted Patents, was filed on October 31, 2013. Google, the manufacturer of the Android operating system, filed in California on December 23, 2013, seeking a declaration that no

version of the Android platform infringes any of the Asserted Patents. Under controlling law, Google's California action takes precedence.

"When a patent owner files an infringement suit against a manufacturer's customer and the manufacturer then files an action of noninfringement or patent invalidity, the suit by the manufacturer generally take[s] precedence." *In re Nintendo of America, Inc.*, Case No. 2014-132, 2014 U.S. App. LEXIS 12707, at *4-5 (Fed. Cir. June 25, 2014) (citing *Spread Spectrum Screening LLC*, 657 F.3d at 1357; *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990)). The purpose of the rule is "to avoid, if possible, imposing the burdens of trial on the customer, for it is the manufacturer who is generally the 'true defendant' in the dispute." *Id.* at *5 (citing *Codex Corp. v. Milgo Elec. Corp.*, 553 F.2d 735, 737-38 (1st Cir. 1977)). The precedence given the manufacturer's suit is meant to "facilitate just, convenient, efficient, and less expensive determination." *Id.* (citing *Katz*, 909 F.2d at 1464).

The Texas court cited to controlling law but failed to analyze it, apply it, or give any precedence at all to Google's manufacturer's suit. The Texas court's failure to follow controlling law is a clear abuse of discretion. *Joy Techs., Inc.*, 6 F.3d at 772 (citing *A.C. Aukerman Co.*, 960 F.2d at 1039 and *Seattle Box Co.*, 756 F.2d at 1581).

Plain and simple, this is a case about Android-based devices. Android functionality is at the heart of both the Texas and California actions. The Texas complaint alleges that "mobile communication devices having a version (or an adaptation thereof) of Android operating system" infringe each of the seven asserted patents. A0015-0046 ¶¶ 15, 18, 28, 44, 59, 74, 89, 104. Nowhere does the complaint allege that any software separate from the Android operating system infringes the asserted patents, or that any HTC devices running a non-Android operating system (*i.e.* a Windows operating system) infringe. The California complaint completely encompasses the scope of the Texas complaint, alleging that no version of the Android platform on any mobile device infringes the same seven patents (A0062 ¶ 25).

The California court, when presented with these same facts, correctly analyzed the Google and HTC relationship as one of manufacturer and customer. A0940. As a result of this relationship, determining infringement issues in the California manufacturer suit "would likely be dispositive" of Rockstar's case against HTC. *Id*. Indeed, it stands to reason that Google as the manufacturer of the Android platform "has a greater interest in defending against charges of patent infringement than the customers." *Id*. This is especially true here, where Rockstar has limited its infringement claims in the Texas action to "Android-operating devices only, even where they asserted a hardware-based patent." A0935. Giving

Google's suit precedence facilitates a just, convenient, efficient and economical resolution of the Android infringement and patent invalidity issues.

Rockstar's attempt to avoid Google's California action, by arguing that it has now sued Google in Texas, is unavailing. As noted above, Rockstar filed an amended complaint on December 31, 2013 -- adding Google as a separate defendant to the Texas action filed against Samsung -- a week after Google had filed its California complaint. Still, even in that amended complaint, Rockstar only asserted three of the seven patents against Google. It was not until July 1, 2014, more than six months after Google filed the California action, that the Texas court granted Rockstar's motion to amend to include all seven of the Asserted Patents in a second amended complaint.

Rockstar's attempt to distinguish the Android platform in the California and Texas actions is equally unavailing. In both cases, it is devices based on Google's Android operating system that are at issue. The complaints in those actions are not directed at devices based on any other operating system, and there are no allegations that HTC devices based on other operating systems, such as the Windows operating system, infringe any of the Asserted Patents.

Rockstar has pointed to no evidence in the record that HTC modifies the Android operating system in any way that impacts the infringement analysis. To the contrary, evidence that Rockstar attempted to introduce in the Texas action in

response to the motion to transfer confirms that the functionality shown on the HTC and Google devices are nearly identical. A0823-0824. Rockstar does not allege HTC makes any alterations to the underlying accused Android operating system that is at all relevant to Rockstar's infringement case. Indeed, Rockstar's infringement contentions in the Texas case cite to Google's stock Android code as providing the purported infringing functionality. A1089-1094. Even assuming, for the sake of argument, that questions surrounding HTC's implementation of the stock Android code may exist, such issues do not alter the precedence given the manufacturer's suit in the first instance. *Katz*, 909 F.2d at 1464.

Rockstar's attempt to distinguish the '551 patent as not involving Google's Android-based HTC devices is belied by Rockstar's complaint, which alleges that only HTC devices having a version of the Android operating system infringe the '551 patent; the same form of allegation Rockstar makes for each of the other Asserted Patents. A0015 ¶ 15, 18. Rockstar nowhere alleges that any of HTC's non-Android devices infringe the '551 patent. Indeed, as Chief Judge Wilken noted, Rockstar limited its infringement claims to "Android-operating devices only" even for asserted hardware claims, such as those in the '551 patent.

II. THE TEXAS DISTRICT COURT CLEARLY ABUSED ITS DISCRETION BY NOT ANALYZING CONVENIENCE FACTORS IN VIEW OF THE PRECEDENCE TO BE GIVEN GOOGLE'S CALIFORNIA ACTION.

A. The California Forum is Given Precedence.

Once Google's California action is given the precedence to which it is entitled, the issue under § 1404(a) becomes whether the "convenience of parties and witnesses, in the interest of justice" justify proceeding in the *other* forum -- here, the Eastern District of Texas. 28 U.S.C. 1404(a); *see In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014) (emphasis in original); *see Micron Tech., Inc. v. Mosaid Techs., Inc.*, 518 F.3d 897, 904 (Fed. Cir. 2008). Chief Judge Wilken understood this analysis, and took the additional step of determining whether "an exception to the general rule giving preference" to the California action was merited. A0940-0941. As Chief Judge Wilken correctly concluded after analyzing the factors considered in a transfer motion under section 1404, the answer is no: the relevant factors do not favor Texas. A0944.

The convenience and availability of witnesses, which this Court has deemed the "single most important factor" in the transfer analysis, favors the Northern District of California. A0941; *In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009). Chief Judge Wilken put it succinctly: "Google's Android products, the target of this infringement action, were designed and created here [in the Northern District]. Many of the witnesses who can testify to the design and development of

the accused Android platform's features reside near Google's headquarters in Mountain View, California." A0941. Further, Apple, which paid the majority 58-percent share for the purchase of the Nortel patents by Rockstar Bidco, is in the Northern District of California. A0933. As Chief Judge Wilken observed, there is a "direct link between Apple's unique business interests, separate and apart from mere profitmaking, and [Rockstar's] actions against Google and its customers. A0934. Apple's role in formulating the Rockstar lawsuits, analyzing the accused Android functionality, and licensing various of the defendants will play a significant role in the case.

In contrast, Rockstar's "primary operations and headquarters are in Canada," not the Eastern District of Texas, and many of the inventors are in Canada. A0943.

B. The Texas District Court Did Not Analyze Convenience Factors in View of the California Precedence.

As explained in Section I, *supra*, the Texas court erred in not giving precedence to the California action filed by Android manufacturer Google. The Texas court compounded the error by then requiring HTC to show that it would be "clearly more convenient" to transfer the Texas action to the Northern District of California. A0008. In view of the precedence given Google's California action,

the correct standard is whether it is *more* convenient for the parties and witnesses to proceed in Texas.[3] It definitely is not.

Inexplicably, the Texas court never even acknowledged Chief Judge Wilken's earlier ruling, much less her thoughtful analysis of the convenience factors. Instead, the Texas court, in its consideration of the convenience factors, gave improper weight to speculative, manufactured and overstated Texas "facts" resulting in the clearly erroneous findings on which its denial of HTC's motion is based. We address those erroneous findings below.

1. Key Witnesses and Documents from Google and Apple Are Located in the Northern District of California.

There is no dispute that Google is located in the Northern District of California, and even the Texas court acknowledged that Google documents would be relevant to the case. A0005. The Texas court suggested, however, that it did not "believe that Google's documentary evidence is located on servers located at its Mountain View, California headquarters." *Id.* The Texas court is simply

[3] Under Fifth Circuit law, the question is articulated as whether it is "clearly more convenient" to proceed in the other forum after balancing the relevant factors. *See In re Nintendo*, 589 F.3d 1194, 1200 (Fed. Cir. 2009). Under Ninth Circuit law, the question is articulated as whether the other forum is the "more appropriate forum for the action." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000). Even giving Rockstar the benefit of the doubt and applying the less stringent formulation of the question, the convenience factors dictate that the Northern District of California, not the Eastern District of Texas, is clearly the more convenient forum. The case should not proceed in the Eastern District of Texas, under either standard.

mistaken. The declaration of a Google employee confirms that "all or nearly all of the documents related to Google's Android platform are located in Mountain View, California, or are stored on Google's secure servers, which are accessible and managed from Mountain View." A0112 ¶ 12.

There is also no dispute that Apple is in the Northern District of California, and that the bulk of its documents are located there. The Texas court, however, suggested that HTC had not identified any particular Apple witness expected to testify at trial. The Texas court is again mistaken. HTC identified Kyle Krpata, Apple's lead attorney in Rockstar's purchase of the Nortel patents, who is located in the Northern District (A0078, A0084), and Apple's corporate representative, also located in the Northern District. A0077-0078. HTC explained that the relevance of testimony from Mr. Krpata and Apple would be directed to HTC's license defenses and damages, among other issues. A0077.

In analyzing whether compulsory process of any non-party witnesses for trial might be affected by Rule 45 of the Federal Rules of Civil Procedure, the Texas court also overlooked HTC's identification of Google as a particular non-party witness that is expected to testify at trial. A0077. Google's corporate representative is located in the Northern District of California, and is subject to that court's compulsory process, but not the process of the Texas court. *Id*. Similarly,

both Mr. Krpata and Apple's corporate representative are subject to the Northern District's compulsory process, but not that of the Texas court.

The fact that Google and Apple witnesses, as well as Google and Apple documents, are located in the Northern District of California, confirms that Texas is not a *more* convenient forum.

2. Neither HTC Witnesses Nor Documents Are Located in the Eastern District of Texas.

There is no dispute that HTC's potential witnesses are located in Washington State and Taiwan. The Texas court correctly declined to simply redistribute the inconvenience of travel or substantially increase the cost of attendance for willing witnesses. But the evidence supports that proceeding with the case in the Northern District of California imposes fewer, not equivalent, costs on Rockstar witnesses than the cost on HTC witnesses to litigate this case in the Eastern District of Texas. A0078-0079. HTC witness Stephanie Bariault explains that travel from Washington State and Taiwan to Oakland, California (where Chief Judge Wilken is located) is cheaper and more efficient than traveling to Marshall, Texas. A0653-0654 at ¶ 24.

The Texas court correctly noted that HTC maintains business documents and records related to marketing and sales in Bellevue, Washington, and research and

development documents in Taiwan. A0004-0005.[4] However, while the Texas order characterized HTC's sources of proof as "insubstantially more difficult" to produce in the Eastern District of Texas than the Northern District of California, it also gave weight to the assertion that Rockstar's documents are located in the Eastern District of Texas to remarkably find that this factor weighs against transfer. A0005. To be consistent under the Texas order's reasoning, it should be insubstantially more difficult for Rockstar's documents to be produced in the Northern District of California.

The fact that HTC witnesses and documents are located in Taiwan and Washington State confirms that Texas is not a *more* convenient forum.

3. Rockstar's Claimed Ties to Texas Are Entitled to Minimal Weight

Rockstar's claimed ties to Texas are entitled to little, if any, weight. Chief Judge Wilken, after reviewing the evidence, concluded that "the circumstances here strongly suggest that Rockstar formed MobileStar as a sham entity for the sole purpose of avoiding jurisdiction in all other fora except MobileStar's state of incorporation (Delaware) and claimed principal place of business (Texas)." A0925. Thinly-veiled connections to a preferred forum "made in anticipation of

[4] The Texas court erroneously stated that Bellevue, Washington, is located in the Northern District of California. A0004. Bellevue is in the Western District of Washington.

litigation and for the likely purpose of making that forum appear convenient," are of no real merit. *In re Microsoft Corp.*, 630 F.3d 1361, 1364 (Fed. Cir. 2011).

The Texas court strained to find any real connection that Rockstar and MobileStar had with Texas. It resorted to identifying two prosecuting attorneys and two former Nortel employees as potential non-party witnesses that lean towards convenience of the Eastern District of Texas. A0006. Rockstar never claims that any of these people will be testifying witnesses. In fact, Rockstar admits that its inventors are mostly located in Canada or elsewhere outside of Texas, and most prosecuting attorneys are also outside Texas. A0696. Thus, the location of these non-party, non-witnesses has no real bearing on the issue of whether Texas is a *more* convenient forum.

C. Litigating the Texas Action Creates a Direct Conflict.

A foundational goal of the section 1404(a) analysis is to "facilitate just, convenient, efficient, and less expensive determination." *In re Nintendo*, 2014 U.S. App. LEXIS, at *5. The Texas court's refusal to transfer the Texas action to California creates a direct conflict that section 1404(a) and the customer suit exception are designed expressly to avoid: two district courts making independent determinations about whether the same accused technology infringes the same patents. Principles of judicial economy and comity counsel against the result reached by the Texas court.

Remarkably, the Texas court ignored Chief Judge Wilken's decision entirely and pointed only to the presence of the other Texas litigations as a factor favoring denial of transfer to California. Each of the other customer defendants also moved to transfer to the Northern District of California. Google, the developer of the Android platform at the heart of the dispute, is litigating the same issues in California. Justice, convenience, efficiency and economy all point to the Northern District of California.

D. Contrived Jury Bias Is Not a Relevant Factor.

The Texas court infers that an interest in resolving cases involving intellectual property developed within a particular district amounts to a "predisposition toward one party, independent of the merits of the case." A0008. There is no basis in the record for a conclusion that the Northern District of California contains a biased jury pool or that a Northern California jury would overlook the merits of a case to blindly favor a particular party. For the Texas court to somehow suggest that contrived jury bias in the Northern District weighs against transfer simply compounds the error. *In re Hoffmann-La Roche*, 587 F.3d 1333, 1338 (Fed. Cir. 2013).

III. THE TEXAS DISTRICT COURT CLEARLY ABUSED ITS DISCRETION IN REJECTING HTC'S MOTION TO STAY THE TEXAS ACTION.

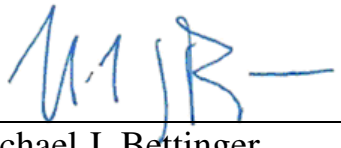
The California case filed by Android manufacturer Google will dispose of most, if not all, of the key issues in this case, including infringement and invalidity. This Court has recognized that the precedence taken by a manufacturer suit such as this "need only have the potential to resolve the 'major issues' concerning the claims against the customer - not every issue - in order to justify a stay of the customer suits." *Spread Spectrum*, 657 F.3d at 1358. At the very least, for the reasons stated in Sections I and II, above, the Texas action against HTC should be stayed pending resolution of Google's California action.

CONCLUSION

Based upon the foregoing, HTC respectfully requests that this Court issue a writ of mandamus directing to the United States District Court for the Eastern District of Texas to vacate its order denying transfer or stay of this action, and to transfer this action to the Northern District of California, or to stay this action until resolution of Google's action in the Northern District of California.

Respectfully submitted,

DATED: August 20, 2014

By 

Michael J. Bettinger
Curt Holbreich
Irene Yang
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111
415-882-8200
415-882-8220 facsimile

Attorneys for Petitioners HTC Corporation and HTC America, Inc.

CERTIFICATE OF SERVICE

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
Misc. No. _____

IN RE HTC CORPORATION and HTC AMERICA, INC.,
Petitioners.

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by K&L Gates LLP, attorneys for Petitioners to print this document. I am an employee of Counsel Press.

On the **20th Day of August, 2014**, I served the within **Petition for Writ of Mandamus** upon:

Mike McKool ***(via FedEx)***
mmckool@McKoolSmith.com
Douglas A. Cawley
dcawley@McKoolSmith.com
Ted Stevenson III
tstevenson@mckoolsmith.com
David Sochia
dsochia@McKoolSmith.com
Ryan Hargrave
rhargrave@McKoolSmith.com
Nicholas M. Mathews
nmathews@McKoolSmith.com
MCKOOL SMITH, P.C.
300 Crescent Court Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044

Jennifer Leigh Truelove
jtruelove@McKoolSmith.com
Samuel Franklin Baxter
sbaxter@McKoolSmith.com
MCKOOL SMITH, P.C.
P.O. Box O
104 East Houston St., Suite 300
Marshall, TX 75670
Telephone: (903) 923-9000
Telecopier: (903) 923-9099

Joshua W. Budwin
jbudwin@mckoolsmith.com
MCKOOL SMITH, P.C.
300 W. 6th Street, Suite 1700
Austin, TX 78701
Telephone: (512) 692-8700
Telecopier: (512) 692-8744

Attorneys for Rockstar Consortium US LP and MobileStar Techs. LLC

Richard D. Harris ***(via FedEx)***
harrisr@gtlaw.com
Jeffrey G. Mote
motej@gtlaw.com
Eric J. Maiers
maierse@gtlaw.com
James J. Lukas, Jr.
lukasj@gtlaw.com
GREENBERG TRAURIG LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8400
(312) 456-8435 facsimile

Mary-Olga Lovett
lovettm@gtlaw.com
GREENBERG TRAURIG LLP
1000 Louisana, Suite 1800
Houston, Texas 77002
(713) 374-3500
(713) 374-3501

Attorneys for Defendants LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics MobileComm USA Inc.

Alexas D. Skucas (***via FedEx)***
askucas@kslaw.com
KING & SPALDING LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 556-2100
(212) 556-2222 facsimile
Steven T. Snyder
ssnyder@kslaw.com
Anup M. Shah
ashah@kslaw.com
KING & SPALDING LLP
100 North Tryon Street, Ste. 3900
Charlotte, North Carolina 28202
(704) 503-2600
(704) 503-2622 facsimile

Everett Upshaw
everettupshaw@everettupshaw.com
David A. Bailey
davidbailey@everettupshaw.com
LAW OFFICE OF EVERETT UPSHAW, PLLC
811 South Central Expressway
Suite 307
Richardson, Texas 75080
(972) 372-4235
(214) 865-6086 facsimile

Attorneys for Defendants ZTE (USA) Inc. and ZTE Corp.

W. Barton Rankin ***(via FedEx)***
bart.rankin@bakermckenzie.com
BAKER & MCKENZIE LLP
2300 Trammel Crow Center
2001 Ross Avenue, Suite 2300
Dallas, Texas 75201
(214) 978-3000
(214) 978-9099 facsimile

D. James Pak
d.james.pak@bakermckenzie.com
BAKER & MCKENZIE LLP
Two Embarcadero Center
11th Floor
San Francisco, California 94111
(415) 576-3000
(415) 576-3099 facsimile

Attorneys for Defendants Pantech Co., Ltd., and Pantech Wireless, Inc

Kathleen M. Sullivan ***(via FedEx)***
Patrick D. Curran
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
(212) 849-7100 facsimile

Charles K. Verhoeven
Sean S. Pak
Amy H. Candido
Matthew S. Warren
Kristin J. Madigan
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
415-875-6600
415-875-6700 facsimile

Eugene Y. Mar
Erik C. Olson
Farella Braun & Martel LLP
235 Montgomery St, 17th Floor
San Francisco, CA 94104
415/954-4400
415/954-4480 (fax)

Attorneys for Defendant Google, Inc.

Charles K. Verhoeven ***(via FedEx)***
Sean S. Pak
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
415-875-6600
415-875-6700 facsimile
Kevin P.B. Johnson
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
(650) 801-5000
(650) 801-5100 facsimile

Joseph Milowic III
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
(212) 849-7100 facsimile

Attorneys for Defendants' Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC

Harold H. Davis, Jr. **(via FedEx)**
harold.davis@klgates.com
Irene I Yang
irene.yang@klgates.com
K&L GATES LLP
Four Embarcadero, Suite 1200
San Francisco, California 94111
(415) 882-8200
(415) 882-8220 facsimile
Jennifer Klein Ayers
jennifer.ayers@klgates.com
K&L GATES LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5500
(214) 939-5849 facsimile

Jeffrey M. Ratinoff
jeffrey.ratifnoff@klgates.com
K&L GATES LLP
630 Hansen Way
Palo Alto, California 94304
(650) 798-6700
(650) 798-6701 facsimile

Attorneys for Defendants ASUStek Computer, Inc. and ASUS Computer International

via E-mail and also via Overnight Delivery to the lead counsel indicated above.

Additionally, a copy will be sent to these U.S. District Judges:

The Honorable Rodney Gilstrap
U.S. District Court, District Judge
Sam B. Hall, Jr. Federal Building
and United States Courthouse
100 East Houston Street
Marshall, Texas 75670
Tel: (903) 935-3868
Fax: (903) 935-2295

via Express Mail, by causing a true copy of each to be deposited, enclosed in a properly addressed wrapper, in an official depository of the U.S. Postal Service.

Unless otherwise noted, 4 copies and a pdf copy on disk, along with the required filing fee, have been hand-delivered to the Court on the same date as above.

August 20, 2014

John C. Kruesi, Jr.
Counsel Press
Counsel Press