

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MICROUNITY SYSTEMS ENGINEERING, INC.,
a California corporation,
Plaintiff,

v.

ACER INC., a Republic of China corporation, et al.
Defendants.

Case No. 02:10-cv-185-TJW-CE

JURY TRIAL DEMANDED

**FIRST AMENDED ANSWER OF HTC CORP., HTC AMERICA, INC., AND EXEDEA,
INC. ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Defendants HTC Corporation ("HTC Corp."), HTC America, Inc. ("HTC America") and Exedea, Inc. ("Exedea") (collectively "HTC" or "Defendants") hereby submit this First Amended Answer ("Answer") to the allegations made in plaintiff MicroUnity Systems Engineering, Inc.'s ("MicroUnity" or "Plaintiff") Complaint for Patent Infringement ("Complaint"). In this Answer, Defendants deny any and all allegations made by Plaintiff in each paragraph of the Complaint unless such allegations are expressly admitted.

THE PARTIES

1. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.
2. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.
3. Defendants lack sufficient information to admit or deny the allegation(s) in this

paragraph and on that basis deny the same.

4. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

5. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

6. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

7. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

8. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

9. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

10. Defendants admit that HTC Corp. is a corporation organized under the laws of Taiwan, R.O.C., with its corporate headquarters at 23 Xinghua Road, Taoyuan 330, Taiwan, R.O.C. Defendants admit that HTC America is a U.S. subsidiary of HTC Corp. and that HTC America is a Texas corporation with offices at 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. Defendants admit that Exedea is also a U.S. subsidiary of HTC Corp. and that Exedea is a Texas corporation with offices at 5950 Corporate Drive, Houston, Texas 77036. Defendants further admit that HTC Droid Incredible and HTC Evo 4G phones are manufactured by HTC Corp. and are imported into and sold throughout the United States.

11. Defendants admit that HTC Corp. manufactured Nexus One phones, which are imported into and sold throughout the United States. Defendants otherwise lack sufficient

information to admit or deny the rest of the allegation(s) in this paragraph and on that basis deny the same.

12. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

13. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

14. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

15. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

16. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

JURISDICTION AND VENUE

17. To the extent this paragraph is directed at Defendants, they admit that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the Complaint purports to set forth an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*; Defendants also admit that they are subject to personal jurisdiction in this judicial district, so venue is authorized in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b); Defendants, however, deny that this judicial district is the most convenient forum, and further deny each and every other allegation in this paragraph. To the extent this paragraph is directed at others, Defendants lack sufficient information to admit or deny the allegation(s) and on that basis deny the same.

18. Defendants admit that the present action involves some of the same patents

involved in the prior actions, *MicroUnity Systems Engineering, Inc. v. Intel Corp. and Dell, Inc.*, C.A. No. 2:04-cv-120; *MicroUnity Systems Engineering, Inc. v. Sony Computer Entertainment America Inc.*, C.A. No. 2:05-cv-505; and *MicroUnity Systems Engineering, Inc. v. Advanced Micro Devices, Inc.*, C.A. No. 2:06-cv-486, and in pending action *MicroUnity Systems Engineering Inc. v. Acer Inc., et al.*, C.A. No. 2:10-cv-185. Defendants also admit that each of these actions was filed in the United States District Court for the Eastern District of Texas, Marshall Division.

ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,742,840 C1

19. Defendants admit that a true and correct copy of United States Patent No. 5,742,840 C1 (the “840 patent”) is included as Exhibit C in the Complaint. Defendants otherwise lack sufficient information to admit or deny the rest of the allegation(s) in this paragraph and on that basis deny the same.

20. Defendants admit that a true and correct copy of Reexamination Certificate 5,742,840 C1 is included as Exhibit C1 in the Complaint. Defendants otherwise lack sufficient information to admit or deny the rest of the allegation(s) in this paragraph and on that basis deny the same.

21. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

22. To the extent this paragraph is directed at Defendants, they deny each and every allegation. To the extent this paragraph is directed at others, Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

23. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

24. To the extent this paragraph is directed at Defendants, they deny each and every

allegation. To the extent this paragraph is directed at others, Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

25. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

ALLEGED INFRINGEMENT OF U.S. PATENT NO. 7,730,287 B2

26. Defendants admit that a true and correct copy of United States Patent No. 7,730,287 B2 (the “287 patent”) is included as Exhibit U in the Complaint. Defendants otherwise lack sufficient information to admit or deny the rest of the allegation(s) in this paragraph and on that basis deny the same.

27. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

28. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

29. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

30. Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

31. To the extent that this paragraph requires a response, Defendants lack sufficient information to admit or deny the allegation(s) in this paragraph and on that basis deny the same.

DEMAND FOR JURY TRIAL

Defendants also demand a jury trial on all issues so triable.

PRAYER FOR RELIEF

Defendants oppose any of the relief sought by Plaintiff in its Prayer for Relief or any

other relief sought by Plaintiff against Defendants.

AFFIRMATIVE DEFENSES

Defendants incorporate by reference the foregoing paragraphs in their entirety and, on information and belief, assert the following Affirmative Defenses. Defendants reserve the right to amend its answer with additional defenses as further information becomes available.

FIRST AFFIRMATIVE DEFENSE: **(Non Infringement)**

1. Defendants do not infringe and have not infringed any valid and enforceable claim of U.S. Patent Nos. 5,742,840 C1 and/or 7,730,287 B2 to the extent such patents are asserted against Defendants (hereafter “patents-in-suit”).¹

2. Defendants do not induce or contribute to and have not induced or contributed to infringement of any valid and enforceable claim of any of the patents-in-suit.

SECOND AFFIRMATIVE DEFENSE **(Invalidity)**

3. Each asserted claim of the patents-in-suit is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103 and/or 112.

THIRD AFFIRMATIVE DEFENSE **(Laches)**

4. Plaintiff’s claims for relief are barred in whole or in part by laches.

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¹ Based on the allegations of the Complaint, it appears that the asserted patent against Defendants is only U.S. Patent Nos. 5,742,840 C1. To the extent the Complaint could be read as asserting any other patent(s) against Defendants, all of the affirmative defenses set forth herein apply to those patent(s) as well.

FOURTH AFFIRMATIVE OR OTHER DEFENSE:
(Estoppel)

5. Plaintiff's claims are barred in whole or in part by estoppel.

FIFTH AFFIRMATIVE DEFENSE:
(License)

6. Some or all of Defendants' products have been licensed.

SIXTH AFFIRMATIVE DEFENSE
(Exhaustion)

7. Plaintiff's claims are barred in whole or in part by patent exhaustion.

SEVENTH AFFIRMATIVE DEFENSE:
(No Fees, Costs or Damages)

8. Plaintiff has failed to plead and/or meet the requirements under 35 U.S.C. §§ 284-288, and has otherwise failed to show that it is entitled to any fees, costs or damages.

EIGHTH AFFIRMATIVE DEFENSE:
(Intervening Rights)

9. Plaintiff's claims are barred, in whole or in part, by the doctrines of absolute and equitable intervening rights. *See* 35 U.S.C. §§ 307(b), 252.

NINTH AFFIRMATIVE DEFENSE:
(No Injunctive Relief)

10. Plaintiff is not entitled to any injunctive relief because it has not suffered irreparable harm and has an adequate remedy at law.

TENTH AFFIRMATIVE DEFENSE:
(Marking)

11. Plaintiff's claims for damages are barred because it failed to mark relevant products as required by 35 U.S.C. § 287.

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Dated: September 1, 2010

Respectfully Submitted,

By: /s/ Kyle Chen
Kyle Chen

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ATTORNEYS FOR DEFENDANTS

HTC CORPORATION, HTC AMERICA, INC.

AND EXEDEA, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service were served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 1st day of September, 2010. Any other counsel of record will be served by email, facsimile transmission and/or first class mail.

/s/ Kyle D. Chen

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