

On October 26, 2012, Defendants HTC Corporation, HTC America, Inc. and Exedeia, Inc. (“HTC”) filed a motion to compel documents inappropriately claimed as privileged by plaintiff Wi-LAN. Wi-LAN had months to review these documents after HTC filed its brief. We are now weeks away from trial and have confirmed what HTC suspected all along – Wi-LAN is abusing the attorney-client privilege to withhold relevant documents.

Pursuant to the Court’s February 26, 2013 order, HTC randomly chose eighty documents from Wi-LAN’s privilege log for *in camera* review (Docket No. 330). On March 4, 2013, Plaintiff Wi-LAN responded by either waiving its privilege claims or admitting error as to twelve (12) documents, namely, Log Entry Nos. 1037, 4359, 4368, 4423, 4490, 4840, 5622, 6181, 9155, 4461, 5104, 5710 and 422 (Docket No. 339, Exhibit A). The number of documents which Wi-LAN admittedly improperly included in its privilege log amounts to **15%** of the documents that HTC randomly chose for *in camera* review. This does not take into account any additional documents that the Court may determine are not privileged.

This 15% “error” rate, when applied to the entire log of 13,762 documents means that there are currently more than **2,200** documents listed in Wi-LAN’s privilege log that are not privileged. Such high numbers from such a random sampling clearly indicates the need for review by a special master.

Despite HTC’s repeated requests, Wi-LAN has refused to produce to HTC the bates numbers corresponding to the documents on the log which it claims to have already produced. Moreover, five of the twelve documents were produced **last night**. These documents are not privileged and include, for example, (1) extensive communications between the parties for which

there is absolutely no privilege, and (2) a highly relevant financial summary of a license on which plaintiff's expert heavily relies for his damages assessment.

Wi-LAN's 15% "error" rate (even before the Court has reviewed these documents) on only 80 randomly selected documents necessitates a more thorough and complete review of the 13,762 documents withheld by Wi-LAN based on privilege to avoid prejudice to HTC.

Dated: March 6, 2013

Respectfully submitted,

By: /s/ Eric H. Findlay
Stephen S. Korniczky (*Admitted Pro Hac Vice*)
Martin R. Bader (*Admitted Pro Hac Vice*)
Sheppard Mullin Richter & Hampton LLP
12275 El Camino Real, Suite 200
San Diego, California 92130
Telephone: (858) 720-8900
Facsimile: (858) 509-3691
skorniczky@sheppardmullin.com

Eric H. Findlay
State Bar No. 00789886
Findlay Craft LLP
6760 Old Jacksonville Highway, Suite 101
Tyler, Texas 75703
Telephone: (903) 534-1100
Facsimile: (903) 534-1137
Email: efindlay@findlaycraft.com

Attorneys for Defendants
HTC CORPORATION, HTC AMERICA, INC.,
EXEDEA, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 6th day of March, 2013, counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail.

/s/ Eric H. Findlay
Eric H. Findlay