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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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10 *In re* Ex Parte Application of

11 APPLE INC.; APPLE RETAIL
12 GERMANY GMBH; and APPLE SALES
INTERNATIONAL,

13 Applicants,

14 For an Order Pursuant to 28 U.S.C.
15 § 1782 Granting Leave to Obtain
16 Discovery from HTC Corporation and
HTC America, Inc. for Use in Foreign
Proceedings.

No.

DECLARATION OF CHRISTINE S.
HASKETT IN SUPPORT OF APPLE'S
EX PARTE APPLICATION FOR AN
ORDER PURSUANT TO 28 U.S.C. §
1782 GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN
PROCEEDINGS

17
18 I, Christine S. Haskett, an attorney admitted to practice in the State of California,
19 declare as follows:

- 20 1. I am an attorney with Covington & Burling, LLP, counsel to Apple Inc.
21 ("Apple").
22 2. I am familiar with the facts set forth in this declaration from personal
23 knowledge and documents I have reviewed.
24 3. I submit this declaration in support of Apple's Ex Parte Application for an
25 Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use In Foreign
26 Proceedings. The application relates to foreign proceedings in Germany before the

HASKETT DECL. I.S.O. APPLE'S EX PARTE APP.
FOR ORDER GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN PROCEEDINGS
Page 1


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1 Mannheim District Court, the Dusseldorf District Court, and the Higher District Court of
2 Karlsruhe.

3 4. Apple Retail Germany GmbH is the defendant in Case Nos. 4a O 69/11, 4a
4 O 116/11, and 4a O 117/11 pending in the Dusseldorf District Court. These actions were all
5 filed by Motorola Mobility, Inc. on April 12, 2011.

6 5. Apple Sales International is the defendant in Case No. 6 U 136/11, pending
7 in the Higher District Court of Karlsruhe and filed on December 14, 2011, which is an
8 appeal of a decision of the Mannheim District Court in Case No. 7 O 122/11, filed by
9 Motorola Mobility, Inc. on April 1, 2011.

10 6. Apple Sales International is the defendant in Case Nos. 7 O 229/11 and 7 O
11 230/11, both filed by Motorola Mobility Inc. on April 1, 2011 in the Mannheim District
12 Court.

13 7. Apple, Inc. is the defendant in Case Nos. 7 O 169/11 and 7 O 443/11, filed
14 by Motorola Mobility, Inc. on April 26, 2011 in the Mannheim District Court.

15 8. The Mannheim and Dusseldorf District Courts determine liability and, upon
16 a finding of infringement, may enter an injunction and order the infringer to pay damages.

17 9. In Cases Nos. 4a O 69/11, 6 U 136/11, 7 O 122/11, 7 O 169/11 Motorola
18 asserts that Apple products infringe European Patent No. EP 1 010 336 (“the ’336 cases”).
19 In Cases Nos. 4a O 117/11, 7 O 230/11, and 7 O 443/11, Motorola asserts that Apple
20 products infringe European Patent No. EP 1 053 613 (“the ’613 cases”).

21 10. HTC Corporation and HTC America, Inc. (collectively “HTC”) are
22 headquartered in Bellevue, Washington, which is within the Western District of
23 Washington. *See* excerpt of HTC’s webpage: <http://www.htc.com/us/about/contact-us>, a
24 true and correct copy of which is attached hereto as Exhibit 1.

25 11. HTC is not a party to the German Actions.
26

1 12. The functionalities accused by Motorola in the '336 cases and the '613 cases
2 generally relate to the wireless functionality of the iPhone and iPad. According to its
3 website, HTC markets wireless communication devices.

4 13. Attached hereto as Exhibit 2 is a true and correct copy of an April 7, 2011
5 opinion in *In re Am. Petroleum Institute*, 11-80008-JF (PSG) (N.D. Cal.).

6 14. Attached hereto as Exhibit 3 is a true and correct copy of a September 19,
7 2008 opinion in *Mirana v. Battery Tai-Shing Corp.*, No. 08-80142 (N.D. Cal.).

8 I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct.

10 Date: January 24, 2012


Christine S. Haskett

EXHIBIT 1



About HTC

Call HTC

Location

North American Headquarters

HTC America 13920 SE Eastgate Way, Suite 200 Bellevue, Washington 98005 Tel: 425-679-5318

HTC Headquarters, Taiwan

HTC Headquarters 23 Xinghua Rd. Taoyuan 330, Taiwan, R. O. C Tel: +886-3-3753252 Fax: +886-3-3753251

Customer Service and Product Support

[E-mail HTC \(/us/about/contact-by-email\)](/us/about/contact-by-email) with questions about one or more of our products our products or visit our [Support Hotline \(/us/support/hotline\)](/us/support/hotline) information page for more information.

Repair Program

Visit our [Service and Repair \(/us/support/service-and-repair\)](/us/support/service-and-repair) page for more information or if you have a device that is out of warranty and wish to have it repaired or an HTC branded device that needs service, please contact the appropriate number below.

Inside the US Outside the US

Siemens 1-888-556-6504317-818-6921

iMate 1-888-350-2375317-818-6986

T-Mobile 1-888-356-2375317-818-6987

Cingular / AT&T 1-888-354-2375317-818-6988

HTC 1-888-617-1113

Note this program is for repair services and not for part orders. If your device needs repair and is within warranty, please contact your local operator.

Technical Support

All technical support is handled through your local operator.

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE *EX PARTE* APPLICATION OF)
AMERICAN PETROLEUM INSTITUTE)
FOR ORDER TO OBTAIN DISCOVERY)
FOR USE IN FOREIGN PROCEEDINGS)
)
)
)
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)

Case No.: C 11-80008 JF (PSG)
ORDER GRANTING *EX PARTE*
APPLICATION FOR ORDER
PURSUANT TO 28 U.S.C. § 1782(A)
(Re: Docket No. 1)

American Petroleum Institute (“API”) has applied to this court for an order to obtain discovery for use in foreign proceedings pursuant to 28 U.S.C. § 1782(a). API seeks an order to authorize a subpoena requiring Google Inc. (“Google”), a resident of Mountain View, California, to provide documents for use in connection with six cases in China involving copyright, trademark, and unfair competition claims asserted against the owners of the engineeringstry.com website (“Engineeringstry”). API argues that because Engineeringstry advertises its website online via Google, Google has information relevant to API’s actions against Engineeringstry in China. The proposed subpoena seeks documents sufficient to identify:

1. all of Engineeringstry’s sponsored-link advertisements distributed by Google;
2. the amount and dates of Engineeringstry’s payments to Google;
3. the search terms that generated Google’s display of the Engineeringstry’s sponsored-link advertisements on Google’s main google.com website;
4. the domain names which identify the Publishers’ Websites on which Engineeringstry’s sponsored-link advertisements appeared and/or appear;
5. the Publishers’ names and contact information, including, but not limited to, the Publishers for the apistandards.com website; and

1 6. the amounts of Google's payments to each of the Publishers, including, but not limited to,
2 the Publishers for the apistandards.com website.

3 I. LEGAL STANDARD

4 A district court may grant an application pursuant to 28 U.S.C. § 1782 where (1) the
5 person from whom the discovery is sought resides or is found in the district of the district court to
6 which the application is made, (2) the discovery is for use in a proceeding before a foreign
7 tribunal, and (3) the application is made by a foreign or internal tribunal or any interested person.¹

8 However, simply because a court has the authority under § 1782 to grant an application
9 does not mean that it is required to do so.² The Supreme Court has identified several factors that
10 a court should take into consideration in ruling on a § 1782 request:

11 “(1) whether the material sought is within the foreign tribunal's jurisdictional reach
12 and thus accessible absent Section 1782 aid; (2) the nature of the foreign tribunal,
13 the character of the proceedings underway abroad, and the receptivity of the foreign
14 government or the court or agency abroad to U.S. federal-court jurisdictional
15 assistance; (3) whether the Section 1782 request conceals an attempt to circumvent
16 foreign proof-gathering restrictions or other policies of a foreign country or the
17 United States; and (4) whether the subpoena contains unduly intrusive or
18 burdensome requests.”³

19 It is common for the process of presenting the request to a court to obtain the order
20 authorizing discovery to be conducted *ex parte*.⁴ Such *ex parte* applications are typically justified
21 by the fact that the parties will be given adequate notice of any discovery taken pursuant to the
22 request and will then have the opportunity to move to quash the discovery or to participate in it.⁵

23 II. DISCUSSION

24 A. AUTHORITY TO ISSUE SUBPOENA

25 As stated above, a district court is authorized to grant a § 1782 application where (1) the
26 person from whom the discovery is sought resides or is found in the district of the district court to

27 ¹ See 28 U.S.C. § 1782(a); *In re Republic of Ecuador*, No. 10-80225 MISC CRB (EMC), 2010
28 WL 3702427, at *2 (N.D. Cal. Sep. 15, 2010).

² See *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004).

³ *In re Republic of Ecuador*, 2010 WL 3702427, at *2 (citing *Intel*, 542 U.S. at 264-65).

⁴ See *In re Republic of Ecuador*, 2010 WL 3702427, at *2

⁵ *Id.*

1 which the application is made, (2) the discovery is for use in a proceeding before a foreign
2 tribunal, and (3) the application is made by a foreign or internal tribunal or any interested person.⁶

3 The court has reviewed API's application and has preliminarily determined that the
4 statutory requirements have been satisfied. First, Google is located in Mountain View, California,
5 which is located in this district. Second, there are six court actions that have been initiated against
6 Engineeringsky in China.⁷ Finally, there can be no real dispute that API qualifies as an interested
7 person because it is the plaintiff in the cases in China.⁸

8 **B. DISCRETIONARY FACTORS**

9 Having concluded that it has the authority to issue the subpoena, the court now turns to the
10 question of whether the discretionary factors identified by the Supreme Court weigh in favor of or
11 against issuance of the subpoena. The court makes the preliminary determination that these factors
12 largely weigh in favor of issuance of the subpoena.

13 **1. JURISDICTIONAL REACH OF FOREIGN TRIBUNAL**

14 The Supreme Court has noted that,

15 “when the person from whom discovery is sought is a participant in the foreign
16 proceeding ..., the need for § 1782(a) aid generally is not as apparent as it
17 ordinarily is when evidence is sought from a nonparticipant in the matter arising
18 abroad. A foreign tribunal has jurisdiction over those appearing before it, and can
19 itself order them to produce evidence. In contrast, nonparticipants in the foreign
20 proceeding may be outside the foreign tribunal's jurisdictional reach; hence, their
21 evidence, available in the United States, may be unobtainable absent § 1782(a)
22 aid.”⁹

23 In the instant case, Google is not a party in the China cases, and therefore this factor
24 weighs in API's favor.

25 **2. NATURE AND RECEPTIVITY OF FOREIGN TRIBUNAL**

26 ⁶ See 28 U.S.C. § 1782(a); *In re Republic of Ecuador*, No. 10-80225 MISC CRB (EMC), 2010
27 WL 3702427, at *2 (N.D. Cal. Sep. 15, 2010).

28 ⁷ See 1/14/11 B. Brett Heavner Decl. ¶ 5 (Docket No. 2).

⁸ *Intel*, 542 U.S. at 256 (stating that an interested person under § 1782 “plainly reaches beyond
the universe of persons designated ‘litigant,’” although there is “[n]o doubt [that] litigants are
included among, and may be the most common example”).

⁹ *Id.* at 264.

1 API argues that China would be receptive to U.S. federal-court jurisdictional assistance.
2 In support of this argument, API points out that the Law of Civil Procedure of the People's
3 Republic of China allows for discovery in litigation, and thus there is no reason to believe that the
4 Chinese court would be unreceptive to evidence collected through discovery conducted pursuant to
5 this subpoena.¹⁰ The court does not have sufficient evidence to determine whether China would
6 be receptive to U.S. federal-court jurisdictional assistance. This factor therefore is treated as
7 neutral.

8 **3. ATTEMPT TO CIRCUMVENT FOREIGN PROOF-GATHERING RESTRICTIONS AND POLICIES**

9 There is nothing to suggest that API's § 1782 request is an attempt to circumvent foreign
10 proof-gathering restrictions. API represents that no such restrictions or policies exist and the
11 requested discovery is consistent with the type of discovery available in the Chinese proceedings.
12 Accordingly, this factor weighs in API's favor.

13 **4. UNDUE INTRUSION OR BURDEN**

14 API has requested six categories of documents, that on their face, do not appear to be
15 unduly intrusive or burdensome and appear to be related to the claims in the Chinese proceedings.

16 **III. CONCLUSION**

17 For the reasons discussed above, API's application is GRANTED. API may serve the
18 subpoena attached as Exhibit B to its application, without prejudice to any motion to quash that
19 Google or any other appropriate party may wish to file.

20 Dated: April 7, 2011

21 
22 PAUL S. GREWAL
23 United States Magistrate Judge

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¹⁰ See 1/14/11 *Ex Parte* Application at 7:18-8:1 (Docket No. 1).

EXHIBIT 3

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E-FILED 9/19/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KWONG MEI LAN MIRANA,

NO. C 08-80142 MISC. JF (RS)

Applicant,

**ORDER GRANTING
APPLICATION FOR ISSUANCE
OF SUBPOENAS UNDER 28
U.S.C. § 1782**

v.

BATTERY TAI-SHING CORP., et al.,

Respondents.

_____ /

In connection with divorce litigation now pending before the District Court of Hong Kong SAR, Matrimonial Cases No. 6100 of 2006, before the Court is the application of Kwong Mei Lan Mirana for an order under 28 U.S.C. § 1782 permitting her to serve subpoenas directing respondents to produce documents, to produce corporate representatives, and to appoint counsels Kathleen V. Fisher, William N. Hebert, and Seung Lee to issue, sign, and serve such subpoenas upon respondents. Good cause appearing, it is hereby ordered that:

(1) Kwong may serve subpoenas in substantially the same form attached as Exhibits 1-11 to her application. The subpoenas shall specify the date for production of documents not less than 45 days after service.

(2) Fisher, Hebert, and Lee may issue, sign, and serve such subpoenas upon respondents.

(3) A copy of this order shall be served with the subpoena.

1 (4) This order is without prejudice to the rights of any person to seek a protective order, or to
2 quash or modify the subpoena under Rule 45 of the Federal Rules of Civil Procedure. Any motion
3 seeking such relief shall be filed under this case number, and shall be noticed for hearing before the
4 undersigned in conformance with the Civil Local Rules.

5 IT IS SO ORDERED.

6
7 Dated: September 19, 2008



8 RICHARD SEEBORG
9 United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

2 Kathleen V. Fisher kfisher@calvoclark.com, sf-receptionist@calvoclark.com

3 Seung Lee slee@calvoclark.com, lthornton@calvoclark.com, sf-receptionist@calvoclark.com

4 William N. Hebert whebert@calvoclark.com, cheryluntalan@calvoclark.com,
5 SF-Receptionist@calvoclark.com, swilson@calvoclark.com

6 Counsel are responsible for distributing copies of this document to co-counsel who have not
7 registered for e-filing under the Court's CM/ECF program.

8 **Dated: 9/19/08**

Richard W. Wieking, Clerk

9
10 **By: Chambers**

United States District Court
For the Northern District of California

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