

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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HTC Corporation, and

HTC America, Inc.,  
Petitioners

v.

INVT SPE LLC,  
Patent Owner

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Case No. IPR2018-01557  
U.S. Patent 6,760,590

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**PETITIONERS' MOTION TO CORRECT A TYPOGRAPHICAL  
OR CLERICAL MISTAKE REGARDING PETITION FOR *INTER PARTES*  
REVIEW OF U.S. PATENT 6,760,590 PURSUANT TO 37 § C.F.R. 42.104(c)**

Pursuant to 37 C. F. R. § 42.104(c), and Paper 08, Petitioners hereby submit their motion to correct three clerical mistakes in the IPR2018-01557 Petition: (1) Exhibit List descriptions of Exhibits 1001, 1002, and in Exhibit 1017; (2) citations to corroborating evidence of public availability of prior art; and (3) an incorrect date. These were copying errors made when preparing IPR2018-01557, for U.S. 6,760,590 ('590 Patent), portions of which were copied from IPR2018-01556, for U.S. 7,206,587 ('587 Patent), filed on the same day. Both patents have the same specification. Both petitions rely on the same prior art and arguments. Correcting these errors will not prejudice Patent Owner ("PO").

Upon finding of unintentional mistake, the Board may grant petitioners' requests to correct petitions and declarations including incorrect text and citations. *See, e.g., Silicon Labs, Inc. v. Cresta Tech Corp.*, IPR2014-00809, Paper No. 28 at 3-6; *Presidio Components v. AVX Corp.*, IPR2015-01332, Paper 12 at 2-4; *see also Amkor Tech, Inc. v. Tessera, Inc.*, IPR2013-00242, Paper No. 32 at 4-6 (allowing correction of typographical error of a citation inadvertently made). Moreover, the Board considers patent owner's ability to file a preliminary response in deciding whether to allow for a correction. *See*, Final Rule, 77 Fed. Reg. 48,680, 48,699 (Aug. 14, 2012). Here, PO was not prejudiced by these clerical errors, they were obvious, the substance did not change, and PO addressed the merits of Petitioners' grounds in its preliminary response ("POPR"), without issue.

**Clerical Error No. 1:** On August 29, 2018, while receiving numerous notices for eight related IPR petitions, Petitioners inadvertently failed to download the Notice of Filing Date Accorded to Petition (Paper 3) ("Notice"). This Notice embedded a request to correct descriptions of Exhibits 1001 and 1002 on the Exhibit List that improperly referred to the '587 Patent (Ex. 1001) and its File History (Ex. 1002), instead of the '590 Patent and its File History. However, the correct exhibits (provided as a courtesy) were included on the record. Petitioners missed the request, in part, due to relying on a temporary legal assistant without PTAB experience who failed to download/circulate the Notice in accordance with Petitioners' standard practice. PO pointed out these discrepancies in its POPR, and Petitioners promptly contacted the PTAB Help Desk. Pursuant to the Help Desk's advice, Petitioners submitted a corrected Exhibit List and Exhibit 1017, and although it confirmed no motion was needed, alerted the Board of the submission.

**Clerical Error No. 2:** Petitioner inadvertently omitted text found in IPR2018-01556 at p. 23, l. 3 - p. 24, l. 2, which should be inserted in IPR2018-01557 at p. 20, l. 8. This text refers to the Declaration of Ximena Solano and corroborating evidence of public availability of the Gils Reference that is found in both petitions, and cited as Exs. 1024, ¶¶ 1-46, Ex. 1010, 1023, 1025-1052, in IPR2018-01557. Petitioners intended this text to be in both petitions, but inadvertently failed to copy the text over from IPR2018-01556 where it was

originally drafted. There was no practical reason to leave it out, and PO did not challenge the evidence or public availability of the Gils reference in IPR2018-01556. Thus, PO will not be prejudiced if the Board allows this correction.

**Clerical Error No. 3:** Filed concurrently herewith is a motion to correct a typographical error in IPR2018-01556, where Petitioner seeks to correct the “published” date of the Gils reference to be 1988 instead of 1998. The identical error is found in IPR2018-01557 at page 20, line 7. For at least the same reasons discussed above, it was inadvertent, and a correction will not prejudice PO.

**Sanctions Are Unjustified:** A motion for sanctions may not be filed without prior Board authorization. *See*, 37 C.F.R. § 42.20(b). Here, PO embedded its “motion” for sanctions in its POPR, without authorization. *See*, Paper 6, 23-24. Thus, the sanctions request should be denied. Moreover, PO’s sanctions request should be denied because it failed to show misconduct by Petitioners. *See, Iron Dome LLC v. Chinook Licensing DE LLC*, IPR2014-00674, Paper 9. Petitioners did not intentionally disregard the Board’s order—it was inadvertently missed, which sets this case apart from *DealerSocket*, cited by PO. In contrast to *DealerSocket*, the defects here did not interfere with PO’s ability to prepare its POPR, and Petitioners acted promptly following discovery of the defects.

Thus, Petitioner’s Motion to Correct clerical errors be granted, and PO’s request for sanctions be denied.

Respectfully Submitted,

Dated: December 21,  
2018

**SHEPPARD, MULLIN, RICHTER &  
HAMPTON** LLP

*/Stephen S. Korniczky/*

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Attorney for Petitioners  
HTC CORPORATION and  
HTC AMERICA, INC.

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6, the undersigned hereby certifies that on December 21, 2018, a copy of the foregoing **PETITIONERS' MOTION TO CORRECT A TYPOGRAPHICAL OR CLERICAL MISTAKE REGARDING PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT 6,760,590 PURSUANT TO 37 § C.F.R. 42.104(c)** is being served electronically on the following counsel via the email addresses listed below:

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