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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CUTTING EDGE VISION, LLC,

Plaintiff,

v.

HTC CORPORATION and
HTC AMERICA, INC.,

Defendant.

NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cutting Edge Vision, LLC (“CEV”) complains against Defendants HTC Corporation and HTC America, Inc. as follows:

NATURE OF THE ACTION

1. Cutting Edge Vision, LLC holds patents for camera and camera-enabled mobile device technologies invented by Jeffrey C. Konicek. It has licensed its technology to leading mobile phone manufacturers including Samsung Electronics Co., Ltd.; LG Electronics Inc.; Sony Mobile Communications Inc.; Microsoft Corporation; ZTE; OnePlus Technology (Shenzhen) Co., Ltd.; Kyocera Corporation; and BLU Products Inc. Despite

1 CEV's repeated notice of infringement, HTC continues its unlicensed infringement of
2 CEV's patents.

3 **THE PARTIES**

4 2. Plaintiff Cutting Edge Vision, LLC is an Arizona Limited Liability Company
5 based in Scottsdale, Arizona.

6 3. Defendant HTC Corporation is incorporated under the laws of Taiwan with its
7 principal place of business at 23 Xinghau Road, Taoyuan City, Taoyuan 330, Taiwan,
8 R.O.C.

9 4. Defendant HTC America, Inc. is a Washington corporation having a regular
10 and established principal place of business at 308 Occidental Ave. S., Suite 300, Seattle,
11 Washington 98104-2822. HTC America, Inc. is a wholly owned United States subsidiary of
12 HTC Corporation. HTC Corporation and HTC America, Inc. are collectively referred to
13 herein as "HTC" or "Defendant."

14 5. HTC is in the business of selling, marketing and distributing consumer
15 electronics including camera-enabled mobile devices and smartphones in the United States,
16 including at least the following models: U11, U Ultra, Bolt, U11 Life, U12+, Desire
17 12+, Desire 12, Desire 530, U Play, One M8, Desire EYE, and One A9.

18 **JURISDICTION AND VENUE**

19 6. This action arises under the Patent Laws of the United States, Title 35 of the
20 United States Code.

21 7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§
22 1331 and 1338(a).

23 8. This Court has personal jurisdiction over HTC because of its systematic and
24 continuous contacts with this jurisdiction, its residence in this District, and because the
25 injury to CEV and the cause of action alleged by CEV has arisen in this District.
26

1 9. HTC is subject to this Court’s specific and general personal jurisdiction
2 pursuant to its substantial business in this forum, including: (i) committing acts of patent
3 infringement giving rise to this action in this District; (ii) regularly doing or soliciting
4 business, engaging in other persistent courses of conduct, and deriving substantial revenue
5 from the sale of camera-enabled mobile devices to individuals in this forum state and in this
6 judicial District; and (iii) maintaining its principal place of business in this District.

7 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b),
8 because HTC resides in this district.

9 **CUTTING EDGE VISION PATENT PORTFOLIO**

10 11. Cutting Edge Vision, LLC is the assignee of a portfolio of thirteen patents
11 issued to Jeffrey C. Konicek for the inventions claimed therein relating to camera and
12 camera-enabled mobile device technologies. The CEV patents in the portfolio currently
13 asserted in this case to be infringed by HTC are:

- 14 • U.S. Patent 7,697,827, entitled “User-Friendlier Interfaces for a Camera,” filed
15 October 17, 2005, issued April 13, 2010;
- 16 • U.S. Patent 9,936,116, entitled “Pictures Using Voice Commands and
17 Automatic Upload,” filed June 21, 2016, issued April 3, 2018;
- 18 • U.S. Patent 10,257,401, entitled “Pictures Using Voice Commands,” filed
19 November 24, 2015, issued April 9, 2019; and
- 20 • U.S. Patent 10,063,761, entitled “Automatic Upload of Pictures from a
21 Camera,” filed November 24, 2015, issued August 28, 2018.

22 The CEV portfolio also includes the following additional patents that claim inventions
23 relating to camera and camera-enabled mobile device technologies:

- 24 • U.S. Patent 7,933,508, entitled “User-Friendlier Interfaces for a Camera,” filed
25 February 22, 2010, issued April 26, 2011;

- 1 • U.S. Patent 8,467,672, entitled “Voice Recognition and Gaze-Tracking for a
2 Camera,” filed April 15, 2011, issued June 18, 2013;
- 3 • U.S. Patent 8,831,418, entitled “Automatic Upload of Pictures from a
4 Camera,” filed December 17, 2012, issued September 9, 2014;
- 5 • U.S. Patent 8,824,879, entitled “Two Words as the Same Voice Command for
6 a Camera,” filed March 6, 2014, issued September 2, 2014;
- 7 • U.S. Patent 8,818,182, entitled “Pictures Using Voice Commands and
8 Automatic Upload,” filed March 10, 2014, issued August 26, 2014;
- 9 • U.S. Patent 8,897,634, entitled “Pictures Using Voice Commands and
10 Automatic Upload,” filed June 26, 2014, issued November 25, 2014;
- 11 • U.S. Patent 8,917,982, entitled “Pictures Using Voice Commands and
12 Automatic Upload,” filed September 25, 2014, issued December 23, 2014;
- 13 • U.S. Patent 8,923,692, entitled “Pictures Using Voice Commands and
14 Automatic Upload,” filed August 6, 2014, issued December 30, 2014; and
- 15 • U.S. Patent 9,485,403, entitled “Wink Detecting Camera,” filed November 12,
16 2014, issued November 1, 2016.

17 Discovery in this matter may establish that HTC infringes one or more of these
18 additional patents. The thirteen patents identified above are all part of the same family of
19 patents and are referred to collectively herein as the “CEV Technology.”

20 12. Mr. Konicek assigned all rights, titles and interests in the CEV Technology to
21 Cutting Edge Vision, LLC, including the right to sue for past damages.

22 **THE LICENSING AND ENFORCEMENT PROGRAM**

23 13. CEV has for several years engaged in a program to license the CEV
24 Technology to major camera and mobile device manufacturers.

25 14. As a result of its licensing efforts, CEV has licensed the CEV Technology to
26 eight of the world’s leading camera and mobile device manufacturers, including:

- 1 • Samsung Electronics Co., Ltd.
- 2 • LG Electronics Inc.
- 3 • Sony Mobile Communications Inc.
- 4 • Microsoft Corporation
- 5 • ZTE
- 6 • OnePlus Technology (Shenzhen) Co., Ltd.
- 7 • Kyocera Corporation
- 8 • BLU Products Inc.

9 15. CEV first notified HTC that it was infringing the CEV Technology six years
10 ago on November 26, 2014. That notice letter included detailed claim infringement charts
11 demonstrating that at least HTC's One M8 and Desire EYE mobile devices infringed at least
12 Claims 1 and 2 of U.S. Patent 7,697,827. CEV offered to discuss the license terms with HTC
13 regarding the CEV Technology and address in good faith the merits of any response or
14 defense presented by HTC.

15 16. During the next six years, CEV continually kept HTC up to date on CEV's
16 progress in patent prosecution (with many additional patents issuing during that period),
17 licensing (including announcing each license agreement), and enforcement (by notifying
18 HTC of any litigation involving the patents). On June 15, 2016, CEV provided detailed
19 claim infringement charts demonstrating that at least HTC's One A9 device infringed the
20 claims of U.S. Patent 7,697,827 identified in the counts herein. On May 9, 2019, CEV
21 provided detailed claim infringement charts demonstrating that at least HTC's U11, U Ultra,
22 Bolt, U11 Life, U12+ infringed the claims of U.S. Patent 10,063,761, U.S. Patent
23 10,257,401, and U.S. Patent 9,936,116 identified in the counts herein, and that the U11, U
24 Ultra, Bolt, and U12+ infringed claims 1 and 2 U.S. Patent 7,697,827.

25 17. On July 16, 2019, CEV filed a complaint for patent infringement against
26 OnePlus Technology (Shenzhen) Co., Ltd. in the Northern District of Illinois (Case No.

1 1:19-cv-04753). On September 2, 2019, CEV filed an amended complaint for patent
2 infringement in that case naming OnePlus and its primary U.S. customer T-Mobile US, Inc.
3 Shortly thereafter, U.S. counsel for OnePlus approached CEV, and the parties negotiated a
4 license agreement. CEV dismissed the case with prejudice as to OnePlus and OnePlus
5 devices on October 15, 2019. On November 5, 2019, CEV announced to HTC that it
6 resolved the OnePlus litigation, indicated that CEV would soon be filing additional lawsuits,
7 and invited HTC to discuss license terms.

8 18. On November 4, 2019, CEV filed a complaint for patent infringement against
9 BLU Products Inc. in the Southern District of Florida (Case No. 19-cv-24566-UU). In May
10 of 2020, CEV and BLU conducted court-ordered mediation and negotiated a running royalty
11 license agreement to resolve the case. CEV and BLU negotiated the agreement and the
12 royalty after discovery, including the parties' exchange of their existing intellectual property
13 license agreements, with full consideration and discussion of those agreements. In addition,
14 the royalty rates were negotiated at arm's length with the assistance of a mediator
15 experienced in intellectual property matters. The parties also negotiated the agreement after
16 CEV provided detailed infringement contentions to BLU, so BLU had a full opportunity to
17 evaluate the technology and consider its value as a component of the infringing devices. On
18 June 12, 2020, CEV announced to HTC that it resolved the BLU litigation and invited HTC
19 to resolve the matter with CEV on similar terms as BLU.

20 19. During the past six years, HTC has periodically engaged with CEV to briefly
21 discuss the merits of the patents. CEV always promptly replied in good faith to the responses
22 and purported defenses presented by HTC. However, HTC never engaged in a meaningful
23 discussion of license terms and repeatedly declined CEV's offers to negotiate an amicable
24 resolution.

25 20. Thus, for nearly six years, HTC, with full knowledge of its infringement, has
26 refused CEV's numerous invitations to negotiate a license with CEV, and in the meantime,

1 eight of the world’s leading camera and mobile device manufacturers accepted a license to
2 the CEV portfolio.

3 **COUNT I**

4 **(Infringement of United States Patent No. 10,063,761)**

5 21. CEV incorporates by reference paragraphs 1 through 19 of this Complaint and
6 realleges them as though fully set forth herein.

7 22. At least since August 28, 2018, HTC has made, used, sold, offered for sale,
8 and/or imported camera-enabled mobile devices that meet each and every element of Claims
9 1-4 and 16 of U.S. Patent 10,063,761 (“the ’761 Patent”), including at least the U11, U
10 Ultra, Bolt, U11 Life, U12+, Desire 12+, Desire 12, Desire 530, and U Play (“the Accused
11 ’761 Devices”). It is likely that other HTC devices will be determined to infringe claims of
12 the ’761 Patent

13 23. Specifically, as recited in CEV’s independent claim 1, at least the Accused
14 ’761 Devices include a lens, a cellular interface, an image sensor configured to take pictures,
15 a non-volatile local memory configured to store one or more pictures, a touch sensitive
16 display, and a controller. In each of the Accused ’761 Devices, the devices include an upload
17 option that instructs the device to confine automatic picture upload to periods without
18 potential cellular network access fees (*e.g.*, to upload only when not roaming). The
19 controller is configured to automatically upload designated photos over a cellular interface.
20 The upload automatically occurs after the device confirms that upload is allowed during the
21 current period, receives an indication that the system is connected to the internet via the
22 cellular interface, and receives an indication a user has elected an option to designate at least
23 one picture to be uploaded (through a selection of device folders for upload).

24 24. Direct infringement of Claims 1-4 and 16 of the ’761 Patent under 35 U.S.C. §
25 271(a) occurred when Defendant made, imported, used, sold and/or offered for sale at least
26 the Accused ’761 Devices that meet the elements of these claims.

1 25. In addition, as established by the conduct set forth above including in
2 Paragraphs 14-17, HTC’s infringement of the ’761 Patent has been and continues to be
3 willful.

4 26. As a direct and proximate result of HTC’s conduct, CEV has suffered and will
5 continue to suffer irreparable injury, for which it has no adequate remedy at law. CEV has
6 also been damaged and, until an injunction issues, will continue to be damaged in an amount
7 yet to be determined.

8 **COUNT II**

9 **(Infringement of United States Patent No. 10,257,401)**

10 27. CEV incorporates by reference paragraphs 1 through 19 of this Complaint and
11 realleges them as though fully set forth herein.

12 28. At least since April 9, 2019, HTC has made, used, sold, offered for sale,
13 and/or imported camera-enabled mobile devices that meet each and every element of Claims
14 1, 3, 4, 6, 9, 11-14, and 18 of U.S. Patent 10,257,401 (“the ’401 Patent”), including at least
15 the U11, U Ultra, Bolt, U11 Life, and U12+ (“the Accused ’401 Devices”). It is likely that
16 other HTC devices will be determined to infringe claims of the ’401 Patent.

17 29. Specifically, as recited in CEV’s independent claim 1, at least the Accused
18 ’401 Devices include a lens, an image sensor configured to take pictures, a controller
19 including a control program having instructions to control and respond to a voice recognizer,
20 and a non-volatile memory. In each of the Accused ’401 Devices, the voice recognizer is
21 configured to use speaker-independent voice-recognition and coupled to one or more
22 microphone. The non-volatile memory stores speaker-independent information
23 representative of a camera system-provided list of two or more English words (for example,
24 the words “cheese” and “capture”) that is designed to enable the voice recognizer to
25 recognize the words when any user of the camera system speaks them. Each English word
26 has its own dictionary entry and is simultaneously assigned by the control program to trigger

1 execution of an identical sequence of operations, wherein the sequence of operations takes a
2 picture using approximately the same delay (for example, taking a selfie picture in response
3 to “cheese” and also in response to “capture”).

4 30. Direct infringement of Claims 1, 3, 4, 6, 9, 11-14, and 18 of the '401 Patent
5 under 35 U.S.C. § 271(a) occurred when Defendant made, imported, used, sold and/or
6 offered for sale at least the Accused '401 Devices that meet the elements of these claims.

7 31. In addition, as established by the conduct set forth above including in
8 Paragraphs 14-17, CEV is informed and believes, and thereon alleges, that HTC's
9 infringement of the '401 Patent has been and continues to be willful.

10 32. As a direct and proximate result of HTC's conduct, CEV has suffered and will
11 continue to suffer irreparable injury, for which it has no adequate remedy at law. CEV has
12 also been damaged and, until an injunction issues, will continue to be damaged in an amount
13 yet to be determined.

14 **COUNT III**

15 **(Infringement of United States Patent No. 9,936,116)**

16 33. CEV incorporates by reference paragraphs 1 through 19 of this Complaint and
17 realleges them as though fully set forth herein.

18 34. At least since April 3, 2018, HTC has made, used, sold, offered for sale,
19 and/or imported camera-enabled mobile devices that meet each and every element of Claims
20 1, 2, 4, 6, 7, 11, 14, and 16-18 of U.S. Patent 9,936,116 (“the '116 Patent”), including at
21 least the U11, U Ultra, Bolt, U11 Life, and U12+ (“the Accused '116 Devices”). It is
22 likely that other HTC devices will be determined to infringe claims of the '116 Patent.

23 35. Specifically, as recited in CEV's independent claim 1, at least the Accused '116
24 Devices have a camera that is operable to take and store pictures and include a lens, an image
25 sensor, at least one microphone, a voice recognizer, a controller, a cellular interface, and a
26 touch sensitive display. In each of the Accused '116 Devices, the voice recognizer is

1 configured to receive and process sounds into recognized words. The camera maintains and
2 stores a plurality of recognizable words having different plain meanings and commonly
3 associated with taking a picture (for example, “cheese” and “capture”) that are simultaneously
4 assigned by the control program to be the same camera command to take a picture, the
5 recognition of any of which will cause the camera to take a picture (for example, taking a
6 selfie picture in response to “cheese” and also in response to “capture”). In each of the
7 Accused ’116 Devices, the devices include an upload option that instructs the device to
8 confine automatic picture upload to periods without potential cellular network access fees
9 (e.g., to upload only when not roaming). The controller is configured to automatically upload
10 designated photos over a cellular interface. The upload automatically occurs after the device
11 confirms that upload is allowed during the current period, receives an indication that the
12 system is connected to the internet via the cellular interface, and receives an indication a user
13 has elected an option to designate at least one picture to be uploaded (through a selection of
14 device folders for upload).

15 36. Direct infringement of Claims 1, 2, 4, 6, 7, 11, 14, and 16-18 of the ’116
16 Patent under 35 U.S.C. § 271(a) occurred when Defendant made, imported, used, sold and/or
17 offered for sale at least the Accused ’116 Devices that meet the elements of these claims.

18 37. In addition, as established by the conduct set forth above including in
19 Paragraphs 14-17, CEV is informed and believes, and thereon alleges, that HTC’s
20 infringement of the ’116 Patent has been and continues to be willful.

21 38. As a direct and proximate result of HTC’s conduct, CEV has suffered and will
22 continue to suffer irreparable injury, for which it has no adequate remedy at law. CEV has also
23 been damaged and, until an injunction issues, will continue to be damaged in an amount yet to
24 be determined.

COUNT IV

(Infringement of United States Patent No. 7,697,827)

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3 39. CEV incorporates by reference paragraphs 1 through 19 of this Complaint and
4 realleges them as though fully set forth herein.

5 40. At least since November 1, 2014, HTC has made, used, sold, offered for sale,
6 and/or imported camera-enabled mobile devices that meet each and every element of Claims
7 1 and 2 of U.S. Patent 7,697,827 (“the ’827 Patent”), including at least the U11, U Ultra,
8 Bolt, U12+, One M8, Desire EYE, and One A9 (“the Accused ’827 Devices”).

9 41. Specifically, as recited in CEV’s independent claim 1, at least the Accused
10 ’827 Devices include a camera that is operable to take and store pictures, a lens, an image
11 sensor, at least two microphones, a voice-recognition unit, and a camera controller. In each
12 of the Accused ’827 Devices, the controller includes a control program having instructions
13 to control and respond to the voice-recognition unit. Each of the Accused ’827 Devices
14 receives sound signals through at least two microphones corresponding to the same utterance
15 and is configured to apply a voice-recognition algorithm based on the energy detected at
16 each of these two microphones.

17 42. At least the U11, Bolt, and U12+ also meet each element of Claim 20 of the
18 ’827 Patent. It is likely that other HTC devices will be determined to infringe claims of the
19 ’827 Patent.

20 43. Direct infringement of Claims 1, 2, and 20 of the ’827 Patent under 35 U.S.C.
21 § 271(a) occurred when Defendant made, imported, used, sold and/or offered for sale at least
22 the Accused ’827 Devices that meet the elements of these claims.

23 44. In addition, as established by the conduct set forth above including in
24 Paragraphs 14-17, CEV is informed and believes, and thereon alleges, that HTC’s
25 infringement of claims 1 and 2 of the ’827 Patent has been and continues to be willful.
26

1 45. As a direct and proximate result of HTC's conduct, CEV has suffered and will
2 continue to suffer irreparable injury, for which it has no adequate remedy at law. CEV has
3 also been damaged and, until an injunction issues, will continue to be damaged in an amount
4 yet to be determined.

5 WHEREFORE, CUTTING EDGE VISION, LLC PRAYS FOR:

- 6 a) Judgment on the Complaint that HTC has willfully infringed one or more of the
7 claims of the '761, '401, '116, and '827 Patents;
- 8 b) A permanent injunction to be issued enjoining and restraining HTC, and its
9 officers, directors, agents, servants, employees, attorneys, licensees, successors,
10 assigns, and those in active concert and participation with it, and each of them,
11 from making, using, selling, offering for sale, or importing any products which
12 infringe claims of the '761, '401, '116 or '827 Patents, and from inducing or
13 contributing to the infringement of any such claims by others;
- 14 c) An award of damages against HTC adequate to compensate CEV for past
15 infringement of the '761, '401, '116 or '827 Patents, together with interest and
16 costs as fixed by the Court, such damages to be trebled where appropriate
17 because of the willful and deliberate character of the infringement;
- 18 d) Judgment that this case is "exceptional" in the sense of 35 U.S.C. § 285, and that
19 CEV is entitled to an award of its reasonable attorneys' fees in the prosecution
20 of this action; and
- 21 e) Such other and further relief as the Court may deem just and proper.
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RESPECTFULLY SUBMITTED, this 3rd day of November, 2020.

SPERLING & SLATER, PC

By: /s/Eamon Kelly

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DEMAND FOR JURY TRIAL

Plaintiff hereby makes a demand for a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedures as to all issues in the above captioned lawsuit.

RESPECTFULLY SUBMITTED this 3rd day of November, 2020.

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