

APPENDIX

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APPENDIX A

NOTE: This order is nonprecedential.

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

2020-103

IN RE: TCT MOBILE INTERNATIONAL LIMITED,
Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the Eastern District
of Texas in No. 2:18- cv-00194-JRG,
Judge J. Rodney Gilstrap.

ON PETITION

Before DYK, WALLACH, and TARANTO, *Circuit
Judges. WALLACH, Circuit Judge.*

ORDER

TCT Mobile International Limited ("TCT International") petitions for a writ of mandamus compelling the United States District Court for the Eastern District of Texas to dismiss for lack of personal jurisdiction.

Semcon IP, Inc. brought this suit in the Eastern District of Texas against TCT International, a Hong Kong company with no offices or employees in Texas.

The complaint accuses TCT International of infringing or actively inducing others to infringe four patents by, inter alia, importing certain smartphones into the United States.

TCT International moved to dismiss the complaint for lack of personal jurisdiction. TCT International argued that the extent of its involvement was purchasing the accused products from a related entity and then selling them in Hong Kong to another related entity, TCT Mobile (US) Inc. (“TCT US”). TCT International argued that it had no control over TCT US’s import and sale of the accused products into the United States, particularly in Texas.

The district court denied the motion. In doing so, it concluded that Semcon had provided “sufficient evidence that, ‘acting in consort’ with TCT US, TCT International deliberately and purposefully shipped Accused Products to Texas.” It did so after noting that TCT International “regularly ships Accused Products ordered by TCT US to a warehouse in Fort Worth, Texas” and an individual “personally travelled to Texas in his capacity as an employee of TCT International to ‘take a look at the location of our handsets after they have been sold to [TCT US].’”^{*}

A writ of mandamus is a “drastic and extraordinary remedy reserved for really extraordinary causes.” *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380 (2004) (internal quotation marks and citation omitted). A petitioner must satisfy three requirements: (1) the petitioner must “have no other adequate means to attain the relief desired; (2) the

^{*} We note that TCT International argues in its petition that this individual was not actually an employee of TCT International. We take no position on that issue here.

petitioner must show that the “right to issuance of the writ is clear and indisputable”; and (3) the petitioner must convince the court that the writ is “appropriate under the circumstances.” *Id.* at 380-81 (internal quotation marks and citations omitted).

Because a defendant can obtain meaningful review of a denial of a motion to dismiss for lack of jurisdiction after final judgment, mandamus is ordinarily not available. See *In re BNY ConvergeX Grp., LLC*, 404 F. App’x 484, 485 (Fed. Cir. 2010). We see no exceptional circumstances here to depart from that general rule. TCT International cannot justify an end run around the final judgment rule by arguing that “the financial harm and inconveniences associated with forcing” it “to litigate in Texas will [already] have been done.” As the Supreme Court has explained, “extraordinary writs cannot be used as substitutes for appeals . . . even though hardship may result from delay and perhaps unnecessary trial.” *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953) (citations omitted).

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

November 06, 2019
Date

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

APPENDIX B

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

CIVIL ACTION NO. 2:18-CV-00194-JRG

SEMCON IP INC.,

Plaintiff,

v.

TCT MOBILE INTERNATIONAL LIMITED,
TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant TCT Mobile International Limited's ("TCT International") Rule 12(b)(2) Motion to Dismiss (the "Motion"). (Dkt. No. 14.) By its Motion, TCT International, a Hong Kong company, asserts that this Court lacks personal jurisdiction over it because it does not manufacture the products made the subject of this suit nor does it import them into the United States or offer to sell or or sell them in the United States. (*See id.* at 1-3.) Having considered the briefing and evidence proffered by the parties, and for the reasons set forth herein, the Court is of the opinion that the Motion should be and hereby is DENIED,

I. Background

Semcon IP Inc. (“Semcon”) accuses TCT International of infringing U.S. Patent Nos. 7,100,061; 7,596,708; 8,566,627; and 8,806,247 “by making, using, selling, offering to sell, and/or importing, and by actively inducing others to make, use, sell, offer to sell and/or importing, products,” such as smartphones, that embody these patents (the “Accused Products”). (Dkt. No. 1 ¶¶ 16.) TCT International asserts that it does not manufacture the Accused Products but instead purchases them from Huizhou TCL Mobile Communication Co. Ltd. (“TCL Huizhou”). (Dkt. No. 29-2, at 1.) TCT International in turn sells the Accused Products to TCT Mobile (US) Inc. (“TCT US”), who then sells the products to retailers in the United States. (*Id.*) TCT International asserts that the sale of the Accused Products to TCT US occurs in Hong Kong, China and that it has no control over TCT US’s subsequent importation or sale of these products into the United States and into Texas. (Dkt. No. 33, at 5.) Therefore, TCT International contends that this Court lacks personal jurisdiction over it. (Dkt. No. 14, at 5.)

II. Legal Standard

Federal Circuit law governs personal jurisdiction where “a patent question exists.” *See Celgard, LLC v. SK Innovation Co.*, 792 F.3d 1373, 1377 (Fed. Cir. 2015). “[W]hether a defendant is subject to specific personal jurisdiction in the forum state involves two inquiries: first, whether the forum state’s long-arm statute permits service of process and, second, whether the assertion of jurisdiction is consistent with due process.” *Id.* “Because the Texas long-arm statute extends to the limits of federal due process, the two-step inquiry collapses into one federal due process analysis.” *Johnston v. Multidata Sys. Int’l Corp.*, 523

F.3d 602, 609 (5th Cir. 2008); *accord Groper v. Mako Prod., Inc.*, 686 F.3d 1335, 1345 (Fed. Cir. 2012) (“California and federal due process limitations are coextensive, and thus the inquiry collapses into whether jurisdiction comports with due process.”).

For due process to be satisfied, the defendant must have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations omitted). “A court must inquire whether the defendant has ‘purposefully directed his activities’ at the forum state and, if so, whether the litigation results from alleged injuries that arise out of or relate to those activities.” *Breckenridge Pharm., Inc. v. Metabolite Labs., Inc.*, 444 F.3d 1356, 1361-62 (Fed. Cir. 2006) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The minimum contacts test is satisfied if a defendant “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.” *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1566 (Fed. Cir. 1994) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)).

Upon a showing of purposeful minimum contacts, the defendant bears the burden to prove unreasonableness. *Elecs. for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1351-52 (Fed. Cir. 2003). In rare circumstances, a defendant may defeat the exercise of personal jurisdiction by “present[ing] a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Burger King*, 471 U.S. at 477.

“Where, as here, a district court’s disposition as to the personal jurisdictional question is based on affidavits and other written materials in the absence of an evidentiary hearing, a plaintiff need only to make a *prima fade* showing that defendants are subject to personal jurisdiction.” *M-I Drilling Fluids UK Ltd. v. Dynamic Air Ltda.*, 890 F.3d 995, 999 (Fed. Cir. 2018). “[A] district court must accept the uncontroverted allegations in the plaintiffs complaint as true and resolve any factual conflicts in the affidavits in the plaintiff s favor.” *Id.*

III. Discussion

TCT International argues that Semcon’s (“Sermon”) stream of commerce argument is flawed because “Semcon’s reliance on the stream of commerce theory continues to neglect the Supreme Court’s 2017 *Bristol-Myers Squibb* decision, and in any event relies on TCT [International]’s mere knowledge rather than showing the required purposeful targeting.” (Dkt. No. 33, at 1.) The Court disagrees with TCT International on both points. The Court finds that jurisdiction over TCT International is appropriate under the stream of commerce theory. The Supreme Court’s recent *Bristol-Meyers* decision did not abrogate the stream of commerce theory. Moreover, while the Federal Circuit has not yet determined whether the stream of commerce theory requires “an action of the defendant purposefully directed toward the forum state” or “a mere act of placing a product in the stream of commerce with the expectation that it would be purchased in the forum state,” the Court finds that jurisdiction is proper in this case under either version of the stream of commerce theory. *Nuance Commc’ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1233 (Fed. Cir. 2010) (quoting

Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 112 (1987)).

A. *Bristol-Myers* did not Abrogate the Stream of Commerce Theory

TCT International argues that the stream of commerce theory was abrogated by the Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*. 137 S. Ct. 1773 (2017). The Court finds nothing in the Supreme Court's opinion to indicate a shift in the Supreme Court's stream of commerce jurisprudence. Neither the Supreme Court's majority opinion nor Justice Sotomayor's dissent even mention the stream of commerce theory. The Supreme Court does not purport to alter its overall jurisprudence regarding specific jurisdiction, noting instead that the Supreme Court's "settled principles regarding specific jurisdiction control this case." *Id.* at 1781.

In *Bristol-Myers*, the Supreme Court held that a California state court could not exercise personal jurisdiction over Bristol-Myers as to products liability claims related to Bristol-Myers' prescription drug Plavix brought by nonresidents of California who "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California."¹ *Id.* The Supreme Court rejected the argument that Bristol-Myer's connection with a distributor in California was sufficient to establish personal jurisdiction in California as to injuries that occurred elsewhere, in part because "the nonresidents have adduced no evidence to show how or by whom the Plavix they took was distributed

¹ Bristol Myers is incorporated in Delaware and headquartered in New York with substantial operations in both New York and New Jersey. *Bristol-Myers*, 137 S. Ct. at 1777-78.

to the pharmacies that dispensed it to them.” *Id.* at 1783. In other words, the nonresident plaintiffs did not show that their injuries “arise out of or relate to” Bristol-Myers’ connection to California. *Burger King Corp.*, 471 U.S. at 472. By contrast, in this case, the shipment of Accused Products to Texas directly relates to Semcon’s claims of patent infringement. *See* 35 U.S.C. § 271(a).

Moreover, the Supreme Court did *not* hold that Bristol-Myers’ activities were insufficient to establish personal jurisdiction in the states where the plaintiffs’ injuries did occur. To the contrary, the Supreme Court specifically noted that their decision, a “straightforward application . . . of settled principles of personal jurisdiction,” did not prevent plaintiffs from pursuing their claims in their home states. *Bristol Meyers*, 137 S. Ct. at 1783. Personal jurisdiction in such states would likely rely on the stream of commerce theory. However, the stream of commerce theory could not establish jurisdiction in California where the plaintiffs did not show that the particular stream of commerce that caused their injury ran through California.² *Id.*

While the Federal Circuit has not addressed the stream of commerce theory since the Supreme Court’s decision in *Bristol-Myers*, other Courts of Appeal have continued to apply the theory. *See, e.g., Plixer Int’l, Inc. v. Scrutinizer GmbH*, 905 F.3d 1, 8 (1st Cir. 2018); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Litig.*, 888 F.3d 753, 778-81 (5th Cir. 2018); *see also Shaker v. Smith & Nephew, PLC*, 885 F.3d 760,

² Even if *Bristol-Myers* were fairly susceptible to TCT International’s interpretation, the Supreme Court expressly declined to decide whether the same result, decided under the 14th Amendment as applied to state courts, would follow under the 5th Amendment as applied to federal courts. 137 S. Ct. at 1784.

780 (3d Cir. 2018) (approving of Justice O'Connor's purposeful availment stream of commerce theory). Absent a clear statement to the contrary from the Supreme Court or the Federal Circuit, this Court will continue to apply the existing stream of commerce jurisprudence.

B. Personal Jurisdiction is Appropriate Under
the Stream of Commerce Theory

TCT International argues that application of the stream of commerce theory is inappropriate because it “is neither a manufacturer nor a distributor of the Accused Products in the US.” (Dkt. No. 33, at 6.) However, TCT International cites no authority for the proposition that the stream of commerce theory applies only to the entities that manufacture the products and that ultimately sell the products to a retailer, in other words, that it applies only at the beginning and the end of the stream. Instead, TCT International relies on the *Beverly Hills Fan* court's holding that personal jurisdiction may be asserted “over a corporation that delivers *its products* into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” (*Id.* at 7 (emphasis in original) (quoting *Beverly Hills Fan*, 21 F.3d at 1566).) Yet, TCT International admits that it purchases the Accused Products from TCL Huizhou and in turn sells them to TCT US. (Dkt. No. 29-2, at 1.) When TCT International accepts legal title to the Accused Products they become *its products*.

TCT International also argues that it does not make sales *in* Texas nor does it intentionally direct products at Texas. TCT International asserts that TCT US is solely responsible for sales in the United States and Texas. These arguments are similar to those rejected by the Federal Circuit in *Polar Electra Oy v. Suunto*

Oy, 829 F.3d 1343 (Fed. Cir. 2016). In *Polar*, Suunto argued that personal jurisdiction over it was improper because its sister entity, ASWO, imported the Accused Products into the United States:

Suunto maintains that it entered into an arms-length agreement with ASWO, pursuant to which ASWO purchases products from Suunto, takes title in Finland, and pays for and directs shipments to the United States. Suunto also maintains that it does not control marketing, distribution, or sales in the United States, and has not visited Delaware to market the accused products.

829 F.3d at 1350. Nonetheless, the Federal Circuit found that Suunto had sufficient contacts with the forum state, Delaware, to sustain specific jurisdiction. *Id.* The Federal Circuit, noting that Suunto had shipped at least ninety-four accused products to Delaware, found that “Suunto did not simply place its products in the stream of commerce, with the products fortuitously reaching Delaware as a result of the unilateral effort of ASWO.” *Id.* at 1351. “Rather, ‘acting in consort’ with ASWO, Suunto deliberately and purposefully shipped the accused products to Delaware retailers.” *Id.* (quoting *Beverly Hills Fan*, 21 F.3d at 1566).

Similarly, in this case, Semcon has adduced evidence that TCT International regularly ships Accused Products ordered by TCT US to a warehouse in Fort Worth, Texas. (Dkt. No. 29-5, Exs. D-1-4; Dkt. No. 29-6, Exs. E-1-4.) TCT US complains that one of these invoices appears to evince a sale between TCT US and TCL Huizhou, whose name appears on the header of the invoice. (Dkt. No. 29-5, Ex. D-1.) However, the remaining seven invoices contain no such header. Rather, these invoices list TCT International’s name

and address in Hong Kong in the footer of the invoice. (Dkt. No. 29-5, Ex. D-2-4; Dkt. No. 29-6, Exs. E-1-4.) These invoices show that TCT International has shipped more than 27,000 Accused Products to Texas since 2015. (*Id.*) Moreover, TCT International's Rule 30(b)(6) witness, Mr. Eric Chan, testified that the company was aware that millions of Accused Products were shipped to Fort Worth, Texas over the last five years. (Dkt. No. 29-4, 25:3-26:17.) Indeed, Mr. Chan testified that he personally travelled to Texas in his capacity as an employee of TCT International to "take a look at the location of our handsets after they have been sold to [TCT US]." (Dkt. No. 29-4, 26:21-27:15.) The Court finds that this is sufficient evidence that, "acting in consort" with TCT US, TCT International deliberately and purposefully shipped Accused Products to Texas. *See Polar*, 829 F.3d at 1350-51. Thus, the Court finds that Semcon "has made a prima facie showing of minimum contacts under all articulations of the stream-of-commerce test." *Id.* at 1351.

C. Exercising Personal Jurisdiction is Reasonable and Fair

Finally, TCT International argues that it would be unfair and unreasonable for the Court to exercise personal jurisdiction over it. (Dkt. No. 14, at 8-9.) "The Supreme Court advises that [this] factor applies only sparingly." *Nuance*, 626 F.3d at 1231. "When a defendant seeks to rely on the 'fair play and substantial justice' factor to avoid the exercise of jurisdiction by a court that otherwise would have personal jurisdiction over the defendant, 'he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Id.* (quoting *Burger King*, 471 U.S. 462, 477 (1985)). TCT International has failed to make such a compelling case here.

TCT International argues that its burden to defend itself in Texas is substantial because it is located in Hong Kong and, thus, it will be required to travel a great distance and defend itself in a foreign legal system which differs significantly from the legal system in Hong Kong.³ (Dkt. No. 14, at 8.) If these factors standing alone were sufficient to deprive U.S. courts of jurisdiction, no holder of a U.S. patent could ever hale a foreign infringer into court. To the contrary, the Federal Circuit has made clear that “defeats of otherwise constitutional personal jurisdiction ‘are limited to the rare situation in which the plaintiffs interest and the state’s interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum.’” *Akro Corp. v. Luker*, 45 F.3d 1541,1549 (Fed. Cir. 1995) (quoting *Beverly Hills Fan*, 21 F.3d at 1568).

Importantly, TCT International’s arguments are not specific to this Court, but would apply equally to any District Court of the United States. However, this Court “is part of the exclusive mechanism established by Congress for the vindication of patent rights. The fact that it [may have] unique attributes of which

³ TCT International also argues that Texas’s interest in asserting jurisdiction is “significantly diminished” because TCT International “has not directed any course of conduct at Texas.” (Dkt. No. 14, at 9.) This argument, the factual premise of which has already been rejected by the Court, is an argument directed at the “minimum contacts” prong of the jurisdictional analysis, not the “reasonable and fair” prong. *Elecs. For Imaging*, 340 F.3d at 1351-52 (“Once the plaintiff has shown that there are sufficient minimum contacts to satisfy due process, it becomes defendants’ burden to present a ‘compelling case that the presence of *some other considerations* would render jurisdiction unreasonable.” (emphasis added) (quoting *Burger King*, 471 U.S. at 477)).

plaintiff . . . has an interest in taking advantage does not change the case.” *Akro*, 45 F.3d at 1549 (quoting *Beverly Hills Fan*, 21 F.3d at 1568-69). “[T]hat it is to plaintiff’s advantage to adjudicate the dispute in the district court’ that it has chosen ‘does not militate against its right to have access to that court.” *Id.* (quoting *Beverly Hills Fan*, 21 F.3d at 1568). Moreover, jurisdiction in this Court is neither unfair nor unreasonable where TCT International “knew the destination of its products, and its conduct and connections with the forum state were such that it should have reasonably have anticipated being brought into court there.” *Nuance*, 626 F.3d at 1234 (citing *World-Wide Volkswagen*, 444 U.S. at 292).

TCT International makes several additional arguments in its reply brief that are also unavailing. (Dkt. No. 22, at 8-10.) First, TCT International’s argument that there is no interest in vindicating patent rights where no patent infringement has occurred is a merits argument inappropriate for this stage of the proceedings. Second, whether Semcon has its principal place of business in the district is not determinative of its interest in proceeding in its chosen forum. Third, whether this Court would have jurisdiction over TCT US is irrelevant to whether jurisdiction over TCT International is proper. Last, the Court finds that *Diece-Lisa Industries, Inc. v. Disney Store USA, LLC*, which held that “a non-exclusive license agreement alone is insufficient to trigger personal jurisdiction over the licensor,” is inapposite to the present case, where no such basis for jurisdiction is alleged. No. 2:12-CV-400, 2017 WL 8786932, at *3 (E.D. Tex. Dec. 19, 2017).

IV. Conclusion

For the reasons set forth herein, TCT International's Rule 12(b)(2) Motion to Dismiss (Dkt. No. 14) is DENIED.

So ORDERED and SIGNED this 1st day of July, 2019.

/s/ Rodney Gilstrap
RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

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APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CASE NO.: 2:18-CV-00194-JRG

SEMCON IP INC.,

Plaintiff,

v.

TCT MOBILE INTERNATIONAL LIMITED AND
TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED,

Defendants.

Courtroom of the Honorable J. Rodney Gilstrap
Complaint Filed: 05/09/2018
Trial Date: TBA

DECLARATION OF ANMING YANG IN SUPPORT
OF MOTION TO DISMISS COMPLAINT FOR LACK
OF PERSONAL JURISDICTION

DECLARATION OF ANMING YANG

I, Anming Yang, pursuant to 28 U.S.C. § 1746,
declare as follows:

1. My name is Anming Yang. I reside in Shenzhen, China. I am over the age of twenty one (21). I have personal knowledge of the matters set forth herein and each of them is true and correct.

2. I submit this declaration in support of the Motion to Dismiss Complaint for Lack of Personal Jurisdiction filed herewith in the above captioned matter.

3. I am a Director of TCT Mobile International Ltd., a Hong Kong, China company ("TCT HK") with a registered place of business at 5th Floor Building 22E No. 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong, China.

4. I have been appointed as Director of TCT HK since 31 October 2017.

5. My general responsibilities include supervision of activities of TCT HK.

6. TCT HK does not manufacture any products such as those accused in the above captioned matter.

7. Huizhou TCL Mobile Communication Co, Ltd. ("TCL Huizhou") with a registered place of business at No. 86 Hechang Qi Lu Xi, Zhongkai Gaoxin District, Huizhou City, Guandong Province, China, manufactures mobile phones in Huizhou City, Guangdong Province, China.

8. TCT HK does not import mobile phones made by TCL Huizhou into the U.S. nor the State of Texas. Importations mean custom clearances.

9. TCT HK does not own any subsidiary companies in the U.S. nor the State of Texas,

10. I do not have U.S. nor Texas sales responsibilities for mobile phones made by TCL Huizhou.

11. TCT HK does not have sales representatives nor employees in the U.S. nor State of Texas.

12. TCT HK does not sell mobile phones made by TCL Huizhou in the State of Texas.

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13. TCT HK does not contract with resellers in the U.S. nor State of Texas for selling mobile phones made by TCL Huizhou.

14. TCT Mobile (US) Inc. ("TCT US"), a Delaware corporation with its principal place of business at 25 Edelman, Suite 200, Irvine, California, imports and sells mobile phones made by TCL Huizhou. TCT US sells to resellers in the State of Texas.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on this 6th day of December, 2018

By: /s/ Anming Yang

Name: Anming Yang

Title: Director

For: TCT Mobile International Ltd.

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APPENDIX D

FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CIVIL ACTION NO. 2:18-CV-00194-jrg

SEMCON IP INC.,

Plaintiff,

v.

TCT MOBILE INTERNATIONAL LIMITED AND
TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED,

Defendants.

**SUPPLEMENTAL DECLARATION OF
ANMING YANG**

Anming Yang, pursuant to 28 U.S.C. § 1746 hereby declares as follows:

1. My name is Anming Yang. I reside in Shenzhen, China. I am over the age of twenty one (21), I am of sound mind, and I am otherwise competent to make this Declaration. The facts set out in this Declaration are based on my personal knowledge and each of them is true and correct.

2. I submit this declaration in support of the Rule 12(b)(2) Motion to Dismiss filed by Defendant TCT Mobile International Limited ("TCT HK").

3. I am a Director of TCT HK, which is a Hong Kong, China company with a registered place of business at 5th Floor, Building 22E No. 22 Science Park

East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong, China.

4. My general responsibilities as Director of TCT HK include the supervision of TCT HK's activities.

5. The facts set forth below in paragraphs numbered 7 through 21, 23, and 24 are true and correct for the time period six years prior to the filing of the above-captioned lawsuit through today's date.

6. As used herein, "accused products" has been defined as "products that utilize SoCs and associated software that perform DCVS or DVFS for power management, including Qualcomm Snapdragon SoCs including at least the Snapdragon 200, 400 and 615 SoCs" and "Alcatel One Touch Idol 3, One Touch Pop Icon, and One Touch Pop Mega LTE smartphones," referenced in Plaintiffs Complaint, and "Alcatel Idol 5S [] smartphone" and Alcatel A30 [] tablet" referenced in Plaintiffs Response in the above-captioned suit. This includes all products referenced in Plaintiff's Complaint and Response.

7. TCT HK did not and does not manufacture the accused products.

8. TCT HK did not and does not manufacture any smartphone or tablet.

9. TCT HK did not and does not sell the accused products to any person or entity in Texas.

10. TCT HK did not and does not sell any smartphone or tablet to any person or entity in Texas.

11. TCT HK did not and does not sell the accused products to a nationwide retailer in the United States.

12. TCT HK did not and does not own any subsidiary companies in the United States.

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13. TCT HK did not and does not have an office, mailing address, or place of business in Texas.

14. TCT HK did not and does not own or lease any real property in Texas.

15. TCT HK did not and does not appoint an agent for the service of process in Texas.

16. TCT HK was not and is not registered to do business in Texas.

17. TCT HK did not and does not have employees. TCT HK did not and does not have employees that reside or work in Texas.

18. TCT HK did not and does not have any bank accounts in Texas.

19. TCT 1-1K did not and does not license any trademarks to any person or entity in Texas.

20. TCT HK has not entered into any agreements for the accused products with any person or entity in Texas.

21. TCT HK does not market or advertise the accused products in Texas.

22. Exhibits C through M to Plaintiff Scmcon IP Int.'s Response in Opposition to TCT Mobile International Limited's Rule 12(b)(2) Motion to Dismiss are not TCT HK websites.

23. TCT Mobile (US) Inc. ("TCT US"), is a Delaware corporation with its principal place of business at 25 Edelman, Suite 200, Irvine California. TCT US was not and is not a subsidiary of TCT

24. TCT US—not TCT HK—did and do importation and selling mobile phones and tablets into the United States.

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I declare under penalty of perjury that the foregoing
is true and correct. Executed on February 15, 2019.

/s/Anming Yang
Anming Yang

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APPENDIX E

**FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CIVIL ACTION NO. 2:18-CV-00194-jrg

SEMCON IP INC.,

Plaintiff,

v.

**TCT MOBILE INTERNATIONAL LIMITED AND
TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED,**

Defendants.

**TCT MOBILE INTERNATIONAL LIMITED'S
FIRST SUPPLEMENTAL RESPONSES
AND OBJECTIONS TO
PLAINTIFF'S INTERROGATORIES**

Defendant TCT Mobile International Limited ("TCT HK") serves these first supplemental objections and responses to Plaintiff Semcon IP Inc.'s ("Plaintiff") First Set of Interrogatories ("Interrogatories").

GENERAL OBJECTIONS

TCT HK hereby incorporates its objections from its initial objections and responses to Plaintiff's First Set of Interrogatories.

**OBJECTIONS AND SUPPLEMENTAL
RESPONSES TO INTERROGATORIES**

1. For the Relevant Time Period, for each of the Accused Products, identify the location where the

Accused Product is originally manufactured and the Entity which manufactures the Accused Product, identify the Path of the Accused Product from the original manufacturer through the Accused Product's (1) entry into the United States; (2) clearance through US. Customs; and (3) entry to Texas to the extent the Accused Product reaches Texas; and identify each Entity that either has legal title, rights and/or responsibilities (*e.g.*, consignor, consignee, bailor, bailee) with respect to the Accused Product along the Path, and in each instance explain the nature of said title, right or responsibility.

SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 1

TCT HK objects to this interrogatory as containing multiple subparts that constitute at least three distinct interrogatories. *See Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 196 (E.D. Tex. 2016) (explaining when an interrogatory constitutes multiple interrogatories). The Court's Order Granting Jurisdictional Discovery limits Plaintiff to five interrogatories. *See* Order (ECF No. 24). TCT HK further objects to this interrogatory to the extent that it seeks information that is not relevant, is overly broad, and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the relative importance of the limited jurisdictional discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Subject to and without waiving the foregoing objections, TCT HK responds as follows:

Huizhou TCL Mobile Communication Co. Ltd.
("TCL. Huizhou") manufactures the Accused Products

in Huizhou City, Guangdong Province, China. TCL Huizhou sells the products to TCT HK. TCT HK sells the products to TCT Mobile (US) Inc. ("TCT US") in Hong Kong. TCT US imports the products into the United States and sells the products in the United States after importation.

2. For each Path of an Accused Product identified in response to Interrogatory No. 1, identify all agreements between You and Affiliates or third-parties relating to the importation, transfer, or shipment of the Accused Product, and where a written agreement does not exist, explain the nature of unwritten agreement, custom, practice, or protocol relating to the importation, transfer, or shipment of the Accused Product, including identifying the corresponding time period and how such a custom, practice, protocol arose and was practiced.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2

TCT HK objects to this interrogatory to the extent that it seeks information that is not relevant, is overly broad, and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the relative importance of the limited jurisdictional discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Subject to and without waiving the foregoing objections, pursuant to Federal Rule of Civil Procedure 33(d), TCT HK refers to the documents produced as TCT00000001—TCT00002617.

3. For each of the Accused Products, identify and describe Your role with respect to their manufacture, shipment, distribution, consignment, transportation, importation, use, sale, offer for sale, marketing, advertising, and customer support during the Relevant Time Period, and for each such activity, identify the geographic location associated with such activity and any TCT Mark used under license in connection with such activity, and for each licensed use of a TCT Mark, identify the corresponding agreement and any benefit, financial or otherwise, that You derive through Your licensee's use of Your Marks.

SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 3

TCT HK objects to this interrogatory as containing multiple subparts that constitute at least three distinct interrogatories. See *Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 196 (E.D. Tex. 2016) (explaining when an interrogatory constitutes multiple interrogatories). The Court's Order Granting Jurisdictional Discovery limits Plaintiff to five interrogatories. See Order (ECF No. 24). TCT HK objects to this interrogatory to the extent that it seeks information that is not relevant, is overly broad, and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the relative importance of the limited jurisdictional discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Subject to and without waiving the foregoing objections, TCT HK responds as follows:

TCT incorporates its response to Interrogatory Nos. 1 and 2, TCT HK does not manufacture the Accused

Products. TCT HK has not entered into any agreements for any TCT Mark. TCT HK's role with respect to the Accused Products is that of facilitator, in Hong Kong, China, between manufacturer TCL Huizhou and importer/seller TCT US.

4. Describe the nature of Your relationship with all of Your U.S. Affiliates including TCT Mobile (US) Inc. (see Dkt. 14-1 at ¶14 in this Action) and TCT Mobile Limited (see Dkt. 23-3 at 2 in this Action) during the Relevant Time Period, including an identification of any written agreements; description of unwritten agreements, customary practices and protocols; and an identification of all instances of overlapping personnel, employees, secondees, interns, directors and/or officers between You and the U.S. Affiliates, whether said individuals had one role with You and the same or different role with the U.S. Affiliate.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 4**

TCT HK objects to this Interrogatory as confusing and lacking foundation to the extent it characterizes TCT Mobile (US) Inc. or TCT Mobile Limited as TCT HK's Affiliate in view of the definition of the term "Affiliate" to be used in these interrogatories. TCT HK further objects to the term "TCT Mobile Limited" as vague, ambiguous, and confusing. Subject to and without waiving the foregoing objections, TCT HK responds as follows:

TCT HK has no U.S. Affiliates as that term is defined for these interrogatories. TCT incorporates its response to Interrogatory No. 2.

5. Describe all activities of a business nature that You or Your employees engaged in the U.S. during the Relevant Time Period relating to the Accused Products

including, without limitation, appearances at trade shows, conferences, and conventions; meetings involving marketing, promoting, selling or offering to sell the Accused Products; and meetings with U.S. Affiliates, customers, end-customers and/or third-parties.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 5**

TCT HK objects to this Interrogatory as lacking foundation to the extent it characterizes TCT HK as engaging in activities relating to the Accused Products in the U.S. Subject to and without waiving the foregoing objections, TCT HK responds as follows:

TCT HK did not and does not engage in any business activities in the U.S., such as appearances at trade shows, conferences, and conventions; meetings involving marketing, promoting, selling or offering to sell the Accused Products; and meetings with U.S. Affiliates, customers, end-customers and/or third-parties.

Date: April 16, 2019

Respectfully submitted,

s/ Calli A. Turner

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ATTORNEYS FOR DEFENDANT TCT
MOBILE INTERNATIONAL LIMITED

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019, a true and correct copy of the foregoing document was served on counsel for Plaintiff by email transmission.

s/ Calli Turner
Calli Turner

APPENDIX F

FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CIVIL ACTION NO. 2:18-CV-00194-jrg

SEMCON IP INC.,

Plaintiff,

v.

TCT MOBILE INTERNATIONAL LIMITED AND
TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED,

Defendants.

**TCT MOBILE INTERNATIONAL LIMITED'S
RESPONSES AND OBJECTIONS TO
PLAINTIFF'S INTERROGATORIES**

Defendant TCT Mobile International Limited ("TCT HK") serves these objections and responses to Plaintiff Semcon IP Inc.'s ("Plaintiff") First Set of Interrogatories ("Interrogatories").

GENERAL OBJECTIONS

1. TCT HK reserves the right to alter or amend its objections and responses as set forth herein as additional facts are ascertained and analyses are made. The following general objections apply to each and every response contained herein and are incorporated by reference as if fully set forth in the specific responses below. The failure to mention one or more of the following general objections in the specific responses

below shall not be deemed a waiver of such objection or objections.

2. TCT HK objects to the Interrogatories, including the instructions contained therein, to the extent that they impose or purport to impose upon TCT HK any requirement or obligation beyond those required by the Federal Rules of Civil Procedure or the Court's Order Granting Jurisdictional Discovery (ECF No. 24).

3. TCT HK objects to the definition of "TCT Mobile," "Defendant," "You," and "Your" as being overly broad, vague, ambiguous, and confusing. For the purpose of its responses, TCT HK construes "TCT Mobile," "Defendant," "You," and "Your" to mean "TCT HK, its predecessors-in-interest, successors-in-interest, and agents."

4. TCT HK objects to the definition of "TCT Product(s)" and "Accused Products" as overly broad and seeking information that is not relevant. For the purpose of its responses, TCT HK construes "TCT Product(s)" and "Accused Products" to mean "products that utilize System-on-a-Chip (SoCs) and 'associated software that perform DCVS or DVFS for power management, including Qualcomm Snapdragon SoCs including at least the Snapdragon 200, 400 and 615 SoCs' and 'Alcatel One Touch Idol 3, One Touch Pop Icon, and One Touch Pop Mega LTE smartphones,'" as referenced in Plaintiff's Complaint, and "Alcatel Idol 5S smartphone" and "Alcatel A30 tablet," as referenced in Plaintiff's Response to TCT HK's Motion to Dismiss.

5. TCT HK objects to Plaintiff's competing definitions of "Person" as confusing.

OBJECTIONS AND RESPONSES TO
INTERROGATORIES

1. For the Relevant Time Period, for each of the Accused Products, identify the location where the Accused Product is originally manufactured and the Entity which manufactures the Accused Product, identify the Path of the Accused Product from the original manufacturer through the Accused Product's (1) entry into the United States; (2) clearance through U.S. Customs; and (3) entry to Texas to the extent the Accused Product reaches Texas; and identify each Entity that either has legal title, rights and/or responsibilities (*e.g.*, consignor, consignee, bailor, bailee) with respect to the Accused Product along the Path, and in each instance explain the nature of said title, right or responsibility.

TCT HK objects to this interrogatory as containing multiple subparts that constitute at least three distinct interrogatories. *See Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 196 (E.D. Tex. 2016) (explaining when an interrogatory constitutes multiple interrogatories). The Court's Order Granting Jurisdictional Discovery limits Plaintiff to five interrogatories. *See* Order (ECF No. 24). TCT 11K further objects to this interrogatory as seeking information that is not relevant, as being overly broad, and as being unproportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the relative importance of the limited jurisdictional discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Subject to and without waiving the foregoing, Huizhou TCL Mobile Communication Co. Ltd. ("TCL

Huizhou”) manufactures the Accused Products in Huizhou City, Guangdong Province, China. TCT HK does not manufacture the Accused Products.

2. For each Path of an Accused Product identified in response to Interrogatory No. 1, identify all agreements between You and Affiliates or third-parties relating to the importation, transfer, or shipment of the Accused Product, and where a written agreements does not exist, explain the nature of unwritten agreement, custom, practice, or protocol relating to the importation, transfer, or shipment of the Accused Product, including identifying the corresponding time period and how such a custom, practice, protocol arose and was practiced.

TCT HK objects to this interrogatory as seeking information that is not relevant, as being overly broad, and as being unproportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the relative importance of the limited jurisdictional discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit

3. For each of the Accused Products., identify and describe Your role with respect to their manufacture, shipment, distribution, consignment, transportation, importation, use, sale, offer for sale, marketing, advertising, and customer support during the Relevant Time Period, and for each such activity, identify the geographic location associated with such activity and any TCT Mark used under license in connection with such activity, and for each licensed use of a TCT Mark, identify the corresponding agreement and any benefit,

financial or otherwise, that You derive through Your licensee's use of Your Marks.

TCT HK objects to this interrogatory as containing multiple subparts that constitute at least three distinct interrogatories. *See Edindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 196 (E.D. Tex. 2016) (explaining when an interrogatory constitutes multiple interrogatories). The Court's Order Granting Jurisdictional Discovery limits Plaintiff to five interrogatories. *See* Order (ECF No. 24). Subject to and without waiving the foregoing, TCT HK does not manufacture the Accused Products. TCT HK does not sell the Accused Products to any person or entity in Texas. TCT HK does not sell the Accused Products to a nationwide retailer in the United States. Instead, TCT HK only ships the Accused Products to TCT Mobile (US) Inc. in California. TCT Mobile (US) Inc. is not an Affiliate of TCT HK. TCT HK did not and does not have any bank accounts in Texas. TCT HK did not and does not license any trademarks to any person or entity in Texas. TCT HK has not entered into any agreements for the Accused Products with any person or entity in Texas.

4. Describe the nature of Your relationship with all of Your U.S. Affiliates including TCT Mobile (US) Inc. (*see* Dkt. 14-1 at ¶14 in this Action) and TCT Mobile Limited (*see* Dkt. 23-3 at 2 in this Action) during the Relevant Time Period, including an identification of any written agreements; description of unwritten agreements, customary practices and protocols; and an identification of all instances of overlapping personnel, employees, secondees, interns, directors and/or officers between You and the U.S. Affiliates, whether said individuals had one role with You and the same or different role with the U.S. Affiliate.

TCT HK objects to this Interrogatory to the extent it characterizes TCT Mobile (US) Inc. or TCT Mobile Limited as TCT HK's Affiliate. TCT HK further objects to the term "TCT Mobile Limited" as vague, ambiguous, and confusing. Subject to and without waiving the foregoing, TCT HK has no U.S. Affiliates.

5. Describe all activities of a business nature that You or Your employees engaged in the U.S. during the Relevant Time Period relating to the Accused Products including, without limitation, appearances at trade shows, conferences, and conventions; meetings involving marketing, promoting, selling or offering to sell the Accused Products; and meetings with U.S. Affiliates, customers, end-customers and/or third-parties.

TCT HK objects to this Interrogatory to the extent it characterizes TCT HK as engaging in activities relating to the Accused Products. Subject to and without waiving the foregoing, TCT HK did not and does not engage in any business activities in the U.S., such as appearances at trade shows, conferences, and conventions; meetings involving marketing, promoting, selling or offering to sell the Accused Products; and meetings with U.S. Affiliates, customers, end-customers and/or third-parties.

Respectfully submitted,

s/ Daniel R. Foster

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ATTORNEYS FOR DEFENDANT TCT
MOBILE INTERNATIONAL LIMITED

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2019, a true and correct copy of the foregoing document was served on counsel for Plaintiff by email transmission.

s/ Calli Turner
Calli Turner